No. 1982.

Mr. Wilton Oldham, of the Civil Service, is permitted to proceed to Europe on furlough for a period of one year from the date of embarkation.

No. 1983.

Mr. Whitley Stokes received charge of the Office of Assistant Secretary to the Government of India, in the Home Department (Legislative), on the forenoon of the 24th ultimo, from Mr. A. G. Macpherson, from whom he will continue to officiate until further orders.

No. 1984.

The 3rd March 1865.

The Hon'ble Sir Barnes Peacock, Kt., returned to the Presidency on the 13th ultimo, and resumed his seat as Chief Justice of the High Court of Calcutta on the following day.

No. 1985.

The Hon'ble Arthur George Macpherson took his seat as Officiating Puisne Judge of the High Court on the forenoon of the 24th ultimo.

No. 1986.

Mr. Philip Sandys Melvill, B. C. S., has reported his departure from India per S. S. "Carnatic," which vessel was left by the Pilot at sea on the 14th ultimo.

No. 1987.

The under-mentioned Officer of the Central Provinces Police has passed the examination prescribed for Junior Police Officers :—

Lieutenant T. E. Vandergucht, Officiating District Superintendent of Police.

No. 1988.

Major F. L. Magniac, Judge of the Small Cause Court at Nagpore, in the Central Provinces, has obtained one month's preparatory leave of absence from the 25th February last, or such date as he may avail himself of the same to proceed to Bombay, for the purpose of appearing before a Medical Board, with a view to obtaining leave on medical certificate to England.

No. 1989.

The Governor General in Council is pleased to extend the provisions of Section 34 of Act V of 1861 to the Towns of Khundwa, Burwai, Mundlaisur, Boorhanpore, and Pundhana, in the Nimar District.

No. 1990.

Mr. E. Richardson, Extra Assistant Commissioner, 1st Grade, British Burmah, is invested with the powers of a Subordinate Magistrate of the 2nd Class, as described in Section 22 of the Code of Criminal Procedure.

No. 1991.

The services of Mr. J. M. Scott, B. A., Civil Engineer, who is employed in the Electric Telegraph Department, are placed at the disposal of the Government of Bengal.

No. 1992.

The under-mentioned promotions in the Great Trigonometrical Survey are sanctioned with effect from the 1st of January last :—

Mr. Michael Charles Hickie... } From Senior Sub-Assistant to the Junior grade of Civil 2nd Assistant.
Mr. Angello D'Souza ... }

No. 1993.

ERRATA.

In Notification No. 826, dated 25th January last, for Mr. G. E. Burr, read Mr. G. E. Barr.

In Notification No. 831, dated 26th of January last, for Mr. W. H. Patterson, read Mr. W. H. Pattison.

No. 1996.

The Governor General in Council is pleased to re-attach to the North-Western Provinces, the Punjab, and Oudh, Mr. F. S. Wigram, of the Civil Service, who returned from furlough on the 2nd instant.

E. C. BAYLEY,
Secy. to the Govt. of India.

FOREIGN DEPARTMENT.

REVENUE.

No. 102.

Fort William, the 1st March 1865.

Pundit Bhaskur Rae is appointed to be an Extra Assistant Commissioner in the Settlement Department of the Province of Oudh, as a temporary arrangement.

GENERAL.

No. 459.

The 28th February 1865.

Major C. Baldwin, Deputy Commissioner of Nursingpore, in the Central Provinces, has obtained privilege leave of absence for two months, from the 1st March 1865, or from the subsequent date on which he may avail himself of it.

No. 461.

The Governor General in Council is pleased to sanction the following promotions in British Burmah :—

Mr. G. E. Barr, Extra Assistant Commissioner, 1st Grade, and Officiating Assistant Commissioner, 3rd Grade, to be Assistant Commissioner, 3rd Grade, from 3rd January 1865.

Mr. F. Motley, Extra Assistant Commissioner, 1st Grade, on Rs. 350 a month, to be Extra Assistant Commissioner, 1st Grade, on Rs. 400 a month, from the above date.

Mr. E. Richardson to be Extra Assistant Commissioner, 1st Grade, on Rs. 350 a month, from the date he enters on the duties of his office.

No. 463.

Mr. J. Treacy is appointed to be Senior Revenue Settlement Officer, and Supernumerary Assistant Commissioner, 2nd Grade, in British Burmah, with effect from the 31st January 1865.

No. 466.

With reference to G. O. No. 180, dated 24th ultimo, Assistant Surgeon S. T. Heard assumed medical charge of the Nuggur Division, in Mysore, from Surgeon Oswald, on the 13th January 1865.

No. 474.

The 1st March 1865.

Mr. H. Gibson, Assistant Commissioner in Oudh, is transferred temporarily to the Settlement Department of that Province, to officiate for Lieutenant W. E. Forbes, on leave.

No. 476.

Major B. T. Reid is appointed to be 1st Class Deputy Commissioner of Darjeeling, in succession to Mr. Wake.

No. 487.

The 2nd March 1865.

With reference to G. O. No. 142, dated 19th January last, Surgeon A. A. Renton, M. D., assumed the duties of Durbar Surgeon at Mysore on the 3rd February 1865.

No. 488.

Syed Abdool Hakeem, Extra Assistant Commissioner of Hurdui, has obtained privilege leave of absence for three months, from the 1st instant, or from the subsequent date on which he may avail himself of it.

No. 490.

Captain J. T. Bushby, Assistant Commissioner, West Berar, has obtained privilege leave of absence for three months, from the 1st instant, or from the date on which he may avail himself of it.

No. 492.

The services of the under-mentioned Officers are placed at the disposal of the Chief Commissioner of Oudh, for employment in that Province:—

Mr. E. B. Thornhill, C. S.
„ J. Woodburn, C. S.
„ J. M. C. Steinbelt, C. S.
„ C. W. McMinn, C. S.
„ J. C. Williams, C. S.
„ A. F. Millett, C. S.

No. 495.

The privilege leave granted to Major W. G. Cumming, Bheel Agent, and Political Assistant, Sirdarpore, in G. O. No. 1275, dated 17th November 1864, is extended to the 31st March.

No. 497.

Mr. H. W. Beddy, Deputy Commissioner of Sandoway, in British Burmah, made over charge of his Office to Lieutenant W. C. Plant, on the forenoon of the 26th January 1865.

No. 500.

The 3rd March 1865.

His Excellency the Governor General in Council is pleased to grant Mr. E. H. Harrison, Assistant Commissioner of Goordaspore, leave of absence on medical certificate for twelve months, to proceed to Europe, from such date as he may avail himself of it.

No. 507.

The Governor General in Council having been pleased to permit Assistant Surgeon G. N. Cheke to continue in medical charge of the Nipal Residency, the Notifications marginally noted are cancelled.

G. O. No. 189, dated 25th Jan. 1865.
G. O. No. 362, dated 13th Feb. 1865.

No. 510.

Lieutenant W. E. Forbes, Assistant Settlement Officer in Oudh, has obtained leave of absence on medical certificate for one year, to proceed to the Hills north of Deyrah or to the Neilgherries.

A. Colvin,
Offg. Under Secy. to Govt. of India.

FINANCIAL DEPARTMENT.

No. 1083.

Fort William, the 27th February 1865.

Notifications.

Mr. J. L. Lushington to be Deputy Auditor and Accountant General, Bombay, in succession to Mr. S. D. Birch, from the 28th instant, or from the date of Mr. Birch's retirement.

No. 1189.

The 3rd March 1865.

Mr. W. W. Crawford, Chief Assistant in the Office Establishment of the Deputy Auditor and Accountant General, N. W. Provinces, has been allowed one month's privilege leave from the 1st instant, making over charge of his duties to the Second Assistant, Mr. Anthony.

No. 1193.

In continuation of Notification No. 415, dated the 20th January last, the following Statement of Cash Balances, as reported up to this date, in the Government Treasuries in India, at the close of the month of December 1864, contrasted with that of the previous years, is published for general information:—

According to the present limits of the several Governments.	1862. December.	1863. December.	1864. December.
	Rs.	Rs.	Rs.
Government of India ...	5,88,16,905	3,20,99,062	1,42,99,098
Bengal ...	1,84,70,464	1,86,25,314	1,63,89,849
N. W. Provinces ...	3,47,11,072	3,20,50,495	2,59,43,248
Punjab ...	1,18,45,313	1,14,54,059	1,35,88,128
Bombay ...	3,06,51,204	1,79,54,770	1,72,31,675
Central Provinces ...	46,43,044	37,24,485	38,60,085
Deccan ...	14,29,865	22,97,921	7,74,041
Madras ...	2,27,68,473	3,10,79,704	1,96,96,963
Total ...	18,33,36,340	14,92,85,810	11,17,83,087

E. H. Lushington,
Secy. to the Govt. of India.

MILITARY DEPARTMENT.

Fort William, the 25th February 1865.

No. 204 *of* 1865.—The services of Assistant Surgeon T. P. Wright, in medical charge of the 38th (the Agra) Regiment Native Infantry, are placed at the disposal of the Government of Bengal.

The 27th February 1865.

No. 205 *of* 1865.—The under-mentioned Officer is permitted to proceed to Europe on leave of absence on sick certificate :—

Major James Tickell, of the Bengal Staff Corps.	For 20 months.

No. 206 *of* 1865.—Captain W. R. Tucker, of the Royal Engineers (now employed in the Department of Public Works), is allowed an extension of leave from the 10th to the 21st December 1864, the date on which he reported his return to Bengal from sick leave to Europe.

The 28th February 1865.

No. 207 *of* 1865.—The under-mentioned Officers are admitted to the Bengal Staff Corps, with effect from the dates specified opposite to their respective names, subject to the confirmation of the Right Hon'ble the Secretary of State for India :—

Lieutenant (Brevet Captain) John Palmer Turton, of the late 26th Regiment Native Infantry, Wing Officer, 4th Goorkha Regiment.	19th February 1861.
Lieutenant Henry Gordon Waterfield, of the late 34th Regiment Native Infantry, Adjutant, 8th Regiment Native Infantry.	19th March 1861.
Lieutenant Charles John Walter, of the General List, Infantry, Doing-duty Officer, 8th Regiment Native Infantry.	9th September 1864.

No. 208 *of* 1865.—The under-mentioned Officer having completed twelve years' service, four years of which were on permanent staff employ, to be Captain from the date specified opposite to his name, under the Royal Warrant of the 16th January 1861, subject to Her Majesty's approval :—

Bengal Staff Corps.

Lieutenant (Brevet Captain) J. P. Turton.	19th February 1865.

No. 209 *of* 1865.—With reference to Government General Order No. 165 of the 2nd March 1863, the name of the under-mentioned Officer, who retired from the service under the Annuity Scheme of 1861, is removed from the list of the Regimental Lieutenant Colonels of Infantry :—

Rank and Name.	Remarks.
Lieutenant Colonel (Major General, Retired List) R. Houghton.	By death of Colonel (Lieut. Genl.) Matthew Coombs Paul, Bengal Infantry.

No. 210 *of* 1865.—His Excellency the Governor General in Council is pleased to make the following appointments :—

PUNJAB IRREGULAR FORCE.

Corps of Guides.

Lieutenant A. J. Nicholson, Officiating Doing-duty Officer, to be Doing-duty Officer, vice Lieutenant W. A. Lawrence, appointed to another situation.

Lieutenant A. H. Davis, of the General List, Bombay Infantry, to officiate as Doing-duty Officer until further orders.

No. 211 *of* 1865.—The services of Lieutenant F. P. Spragge, of the Royal Engineers, are placed at the disposal of the Public Works Department.

No. 212 *of* 1865.—The under-mentioned Officer is permitted to proceed to Europe on leave of absence on sick certificate :—

Lieutenant Colonel George Jackson, of the Bengal Staff Corps, Commandant, 2nd Bengal Cavalry.	For 20 months.

No. 213 *of* 1865.—The following promotions by Brevet are made under the operation of G. G. O. No. 632 of the 4th of August 1864, subject to Her Majesty's approval :—

BREVET.

Corps.	Rank and Names.	Date from which entitled to the rank of Lieutenant Colonel.
	To be Lieutenant Colonels.	
Cadre of late 26th N. I.	Major Folliott Walker Baugh	13th January 1865.
Cadre of late 38th N. I.	Ditto Henry Richard Shelton	13th „ „
Cadre of late 45th N. I.	Ditto Alexander Sutton Osborn Donaldson ...	24th „ „
Cadre of late 47th N. I.	Ditto William Claye Watson	24th February „
	To be Majors.	Date from which entitled to the rank of Major.
Cadre of late 2nd E. B. Fusiliers.	Captain William Conrad Hamilton	5th January 1865.
Staff Corps ...	Ditto John Mackillop Mackenzie	18th „ „
Cadre of late 39th N. I.	Ditto Gordon Cavenagh	18th „ „
Cadre of late 4th N. I.	Ditto Robert Stothert	18th „ „
Cadre of late 24th N. I.	Ditto Richard Chaloner Lindsey	11th February „
Cadre of late 5th Eur. L. Cavy.	Ditto Richard Jenkins	20th „ „
	To be Captains.	Date from which entitled to the rank of Captain.
Staff Corps ...	Lieutenant William Henry Joseph Lance (Captain in the Staff Corps.)	18th September 1861.
Cadre of late 52nd N. I.	Ditto Alexander Cockburn	20th January 1865.
Cadre of late 5th Eur. Regt.	Ditto Lancaster Byron James Davies	13th February 1865.

No. 214 *of* 1865.—The under-mentioned Surgeon of the Bengal Medical Department is promoted to the rank of Surgeon Major, under the provisions of Government General Order No. 507 of the 20th June 1864, subject to Her Majesty's approval :—

Rank and Name.	From what date.
Surgeon Francis Turnbull, M. D.	11th February 1865.

The 1st March 1865.

No. 215 *of* 1865.—The under-mentioned Officer has reported his return from England :—

	Date of arrival at Bombay.
Lieutenant M. P. Moriarty, of the late 41st Regiment Native Infantry, Adjutant, 3rd Infantry, Hyderabad Contingent.	17th February 1865.

The 1st March 1865.

No. 216 *of* 1865.—His Excellency the Governor General in Council is pleased to make the following appointment :—

PUNJAB IRREGULAR FORCE.

5th Infantry.

Lieutenant C. McK. Hall, of the General List, Infantry, to be Quarter Master, to fill an existing vacancy.

The 2nd March 1865.

No. 217 *of* 1865.—The under-mentioned Officers have reported their departure on the dates specified opposite to their respective names :—

Major H. Hayley, of the Bengal Staff Corps, on leave for twenty months, Government General Order No. 86 of the 20th January 1865 ...	"Bengal," 25th January 1865.
Lieutenant J. M. Trotter, of the General List, Infantry, Doing-duty officer, 24th (Punjab) Regiment Native Infantry, on leave for twenty months, Government General Order No. 79 of the 19th January 1865 ..	
Lieutenant Colonel (Brevet Colonel) Sir H. B. Edwardes, K. C. B., of the Bengal Infantry, Commissioner and Superintendent of the Umballa Division, on leave for twenty months, Government General Order No. 117 of the 2nd February 1865 ...	"Erymanthe," 3rd February 1865.
Captain R. C. Low, of the late 4th European Light Cavalry, 2nd in Command and Squadron Officer, 13th Bengal Cavalry, on leave for twenty months, Government General Order No. 8, of the 4th January 1865 ...	"Alnwick Castle," 9th February 1865.
Lieutenant E. C. Steer, of the late 3rd Madras European Regiment, on leave for twelve months, Government General Order No. 68 of the 17th January 1865 ..	
Lieutenant Colonel R. Maclagan, of the Royal Engineers, Chief Engineer and Secretary to the Government of the Punjab, Department of Public Works, on leave for fifteen months, Government General Order No. 144 of the 8th February 1865 ...	"Simla," 10th February 1865.
Major H. Mills, of the Bengal Staff Corps, Sub-Assistant Commissary General, on leave for twenty months, Government General Order No. 142 of the 7th February 1865 ...	
Major J. R. A. S. Lowe, of the Bengal Staff Corps, Deputy Assistant Commissary General, on leave for twenty months, Government General Order No. 138 of the 6th February 1865 ..	
Captain J. D. Laurie, of Her Majesty's 34th Foot, District Inspector of Musketry, 5th Division, on leave for twenty months, Government General Order No. 142 of the 7th February 1865 ...	
Lieutenant C. D. P. Nott, of the late 4th European Regiment, on leave for twenty months, Government General Order No. 144 of the 8th February 1865 ...	"Simla," 10th February 1865.
Surgeon J. J. Clarke, of the Medical Department, in Medical charge, 7th Bengal Cavalry, on leave to Australia for two years, Government General Order No. 69 of the 17th January 1865 ..	
Surgeon J. Wilson, of the Madras Medical Establishment, on leave for twenty months, Government General Order No. 138 of the 6th February 1865 ...	
Lieutenant A. Andrew, of the Bengal Staff Corps, on leave to Europe on urgent private affairs, for six months, without pay, Government General Order No. 125 of the 3rd February 1865. ...	"Result," 15th February 1865.
Surgeon Major C. Archer, M. D., of the Medical Department, on leave for twenty months, Government General Order No. 103 of the 26th January 1865 ...	19th February 1865.
Lieutenant Colonel H. C. James, of the Bengal Staff Corps, Private Secretary to the Hon'ble the Lieutenant Governor of Bengal, on leave for twenty months, Government General Order No. 142 of the 7th February 1865.	
Major H. Lane, of the late 5th European Light Cavalry, Brigade Major, Rawul Pindee, on leave for twenty months, Government General Order No. 165 of the 13th Feb. 1865	
Captain and (Brevet Lieutenant Colonel) P. H. K. Dewaal, late 34th Native Infantry, on leave for twenty months, Government General Order No. 124 of the 3rd February 1865 ..	"Nemesis," 25th February 1865.
Surgeon Major T. C. Hutchinson, of the Medical Department, on leave for twenty months, Government General Order No. 165 of the 13th February 1865 ...	
Conductor T. Wilkins, of the Ordnance Commissariat Department, on furlough for three years, Government General Order No. 93 of the 24th January 1865 ...	

No. 218 *of* 1865.—The under-mentioned Officers are permitted to proceed to Europe on leave of absence on sick certificate :—

Lieutenant Osmond Barnes, of the Bombay Staff Corps, 2nd Squadron Officer, 10th Bengal Cavalry.	For 20 months.

Assistant Surgeon Thomas Edmondston Charles, M. D., of the Medical Department, Professor of Midwifery, Medical College Hospital.	For 20 months, under the new Regulations.

No. 219 *of* 1865.—The under-mentioned Officer is permitted to proceed to Europe on furlough on private affairs :—

Lieutenant William Hampton, of the Invalid Establishment.	For 3 years, under the old Regulations.

No. 220 *of* 1865.—The under-mentioned Non-Commissioned Officer and Soldiers of Her Majesty's service are permitted to reside and draw their pay in India as out-Pensioners of Chelsea Hospital, according to the Royal Warrant of the 23rd July 1864, pending a reference to the Home Authorities as to the amount of their pensions :—

Sergeant Walter Brett, of No. 3 Battery, 22nd Brigade, Royal Artillery.

Gunner Thomas Crabtree, of No. 5 Battery, 24th Brigade, Royal Artillery.

Gunner James McMahon, E—C. Royal Horse Artillery.

No. 221 *of* 1865.—Sub-Conductor G. Verini, lately attached to the Army Clothing Agency, who proceeded to Europe on leave under Government General Order No. 239 of the 2nd April 1863, has been admitted to a pension as Sergeant at 2 shillings per diem, payable in Europe.

No. 222 *of* 1865.—The following temporary promotions are made in the Warrant Grades :—

Army Commissariat Department.

Conductor Horatio Boardman Steward, to act as Deputy Assistant Commissary. Sub-Conductor David Hutchins, to act as Conductor. Sergeant Joseph Rawdon, to act as Sub-Conductor.	From the 18th January 1865, during the absence on sick leave to Europe of Lieutenant A. B. Fox, Deputy Assistant Commissary, or until further orders.

No. 223 *of* 1865.—With the sanction of the Right Hon'ble the Secretary of State for India, His Excellency the Governor General in Council is pleased to notify that Officers of the Unattached List, will, in special cases, be allowed exemption from the strict operation of the rule under which no Officer can hold a staff appointment who has not passed the prescribed examination in the Native languages.

In every case in which it is proposed to appoint an unpassed Unattached Officer to a staff situation, the previous sanction of Government is to be obtained, and it should be satisfactorily shown that the Officer whom it is proposed to exempt from application of the rule is specially fitted for the situation which it is desired to confer upon him.

It will also be required in every case that the Officer shall have passed a colloquial examination.

The 3rd March 1865.

No. 224 *of* 1865.—The under-mentioned Soldier is admitted to pension as specified opposite to his name :—

Gunner Jeremiah Smith, of No. 1 Battery Bengal Artillery.	1*s.* (one shilling) per diem, payable in Europe.

No. 225 *of* 1865.—Officiating Sub-Conductor Edward McCarthy, of the Army Commissariat Department, appointed by Government General Order No. 464 of the 14th July 1863, is remanded from his present grade to the rank he held previous to his transfer to the Commissariat Department, and his services are placed at the disposal of His Excellency the Commander-in-Chief.

No. 226 *of* 1865.—The under-mentioned Officers are permitted to proceed to Europe on leave of absence on sick certificate :—

Captain (Brevet Major) Mangles James Brander, of the late 40th Regiment Native Infantry, Deputy Assistant Commissary General ...	For 20 months, under the new Regulations.
Captain Thomas George Montgomerie, of the Royal Engineers, Astronomical Assistant, Great Trigonometrical Survey of India ...	For 20 months, under the new Regulations.

No. 227 *of* 1865.—The under-mentioned Officers having completed twenty years' service, six years of which were on permanent staff employ, to be Majors, from the dates specified opposite to their respective names, under the Royal Warrant of the 16th January 1861, subject to Her Majesty's approval :—

Bengal Staff Corps.

Captain (Brevet Major) H. T. Macpherson, V. C.	28th February 1865.
Captain (Brevet Major) E. H. Langmore.	1st March 1865.
Captain E. B. Clay ...	2nd March 1865.

H. W. Norman, *Colonel*,
Secy. to the Govt. of India.

PUBLIC WORKS DEPARTMENT.

Revenue—Forests.

No. 5.

Fort William, the 28th February 1865.

Notifications.

The Governor General in Council is pleased to appoint Lieutenant G. C. Sartorius, of the Bombay Artillery, to officiate as an Assistant Conservator of Forests in the Central Provinces, with effect from the date of joining.

Establishment.

No. 66.

Captain F. G. S. Parker, Assistant Engineer, 1st Class, and Captain W. H. Mackesy, Assistant Engineer, 2nd Class, are transferred from the

North-Western Provinces and the Punjab, respectively, to Hyderabad.

No. 67.

The 1st March 1865.

Mr. J. T. Robinson, Accountant, first Grade, is transferred from Bengal to the Accountant General's Office, Public Works Department, as a temporary arrangement with effect from 26th January 1865.

No. 68.

Mr. T. Davis, Accountant, third Grade, Oudh, is granted two months' privilege leave from the 1st February 1865.

No. 69.

Baboo Petumber Sing, late Deputy Superintendent, Ganges Canal, North-Western Provinces, is re-appointed to the Department of Public Works as an Assistant Engineer, first Grade, and posted to the North-Western Provinces.

No. 70.

Mr. C. Phipps, Accountant, fourth Grade, Public Works Department, British Burmah, is promoted to Accountant, third Grade, and posted to Port Blair.

Mr. Bernard Gantzer is appointed an Accountant, fourth Grade, and posted to British Burmah.

These changes have effect from 1st February 1865.

No. 71.

His Excellency the Governor General in Council is pleased to appoint Captain R. C. B. Pemberton, R. E., Executive Engineer, 2nd Class, Oudh, and Lieutenant C. H. Luard, R. E., Assistant Principal, Thomason College, to be Assistant Secretaries to the Government of India, in the Public Works Department.

Captain W. Jeffreys, R. E., will continue to be attached to the Public Works Secretariat until completion of the special duty on which Captain Pemberton is at present employed.

No. 72.

Lieutenant Colonel W. Maxwell, R. A., appointed Chief Engineer and Secretary to Chief Commissioner, Central Provinces, in Notification No. 64, dated the 23rd February 1865, was relieved of his duties as Superintending Engineer, Behar Circle, by Captain C. J. Mead, Executive Engineer, 2nd Division Grand Trunk Road, on the afternoon of the 14th February 1865.

Captain Mead will officiate as Superintending Engineer of the Behar Circle till further orders.

No. 73.

Captain C. D. Newmarch, R. E., Chief Engineer and Secretary to Chief Commissioner, British Burmah, is granted preparatory leave from the 15th January to 9th March 1865.

No. 74.

Sergeant Graham, Assistant Master, 2nd Department Thomason College, is appointed to the Public Works Department as an Overseer, first Grade, and posted to the Straits Settlement.

No. 75.

The 3rd March 1865.

Conductor J. Finn, Overseer, first Grade, is transferred from Mysore to the Straits Settlement, and Sub-Conductor E. Scully, Overseer, first Grade from the Straits Settlement to Mysore.

No. 76.

In continuation of Notification No. 343 of the 5th December last, Mr. W. D. Brockman, Executive Engineer, fourth Grade, assumed charge of the 1st Oudh Road Division on the afternoon of the 24th December 1864.

E. C. S. WILLIAMS, *Captain*, R. E.
Under Secy. to the Govt. of India.

ADVERTISEMENTS.

NOTIFICATION.

Instances having recently occurred of Officers in the North-Western Provinces submitting requisitons for leave to Calcutta from a misinterpretation of the instructions contained in this Office Notification published in the *Gazette of India* of the 31st December 1864, page 994, and in the *Calcutta Gazette* of the 11th January 1865, page 47; it is hereby notified that those instructions were intended to apply only to Officers whose Bills have hitherto been audited by the Civil Pay Master, Fort William.

HUGH SANDEMAN,
Accountant General, Bengal.

The 23rd February 1865.

NOTIFICATION.

It is hereby notified that, under instructions from the Government of Bengal, a Treasury has been established at the Station of Mynagooree, in the Western Dooars of Bhootan, under the control of the Deputy Commissioner for the Western Dooars.

The Officer in charge of the Treasury at Mynagooree is authorised to issue Supply Bills and Transfer Receipts, payable from other Treasuries under the operations of the existing rules, but his Treasury should be drawn upon *on the public service only*, except for remittances to the Officers and men of the Forces in the Dooars.

HUGH SANDEMAN,
Accountant General, Bengal.

CALCUTTA;
BENGAL ACCTT. GENL.'S OFFICE,
The 20th February 1865.

NOTICE.

Mr. Robert Stewart is authorised to sign our Firm.

GLADSTONE, WYLLIE, AND CO.

CALCUTTA,
20th February 1865.

Statement of Government Promissory Notes enfaced for Payment of Interest in London, showing the total Amount outstanding according to the Registers received in this Office up to 21st February 1865.

	4 per cent. of 1824-25.	4 per cent. of 1828-29.	4 per cent. of 1832-33.	4 per cent. of 1835-36.	4 per cent. of 1842-43.	4 per cent. of 1854-55.	5 per cent. Public Works of 1854-55.	5 per cent. of 1856-57.	5½ per cent. of 1859-60.	3½ per cent. of 1853-54.	4½ per cent. of 1856-57.	Total Rs.
Amount brought forward from Statement dated 9th February 1865	53,000	300	25,62,600	22,78,700	95,56,100	65,63,600	32,17,100	4,80,77,900	2,41,08,800	17,600	16,000	9,64,51,400
ADD—												
Amount enfaced at Madras, as per Registers received up to date...	...	...	...	...	6,000	21,000	8,000	6,100	75,000	...	...	1,16,100
Amount enfaced at Bombay, as per ditto ditto ditto ...	...	...	...	...	...	...	...	10,000	...	...	...	10,000
Amount enfaced at Calcutta up to date	...	...	...	700	9,500	20,000	2,500	90,600	8,500	...	...	1,31,800
Total ...	53,000	300	25,62,600	22,79,400	95,71,600	66,04,300	32,27,600	4,81,84,600	2,41,92,300	17,600	16,000	9,67,09,300
DEDUCT—												
Amount removed from the London Books, as per Registers received up to date ...	...	...	3,100	1,000	7,900	20,100	1,000	1,70,000	75,200	...	...	2,78,300
Total ...	53,000	300	25,59,500	22,78,400	95,63,700	65,84,200	32,26,600	4,80,14,600	2,41,17,100	17,600	16,000	9,64,31,000

FORT WILLIAM;
LOAN OFFICE,
The 27th February 1865.

R. P. HARRISON,
Acctt. Genl. to the Govt. of India.

No. 56.

NOTIFICATION.

LOST, STOLEN, OR DESTROYED.

The under-mentioned Government Promissory Note deposited in the Treasure Chest of the late Cawnpore Executive Commissary Officer of this Division (Deputy Assistant Commissary General Captain W. W. Williamson), on the outbreak of the mutiny in the month of June 1857, by Sewbux Roy and Bissen Nath, late Contractors, is not forthcoming. The Note was endorsed in favor of Executive Commissariat Officer, Cawnpore, by the depositor, and has never been endorsed by him to any other party; payment of this Note and of interest thereupon have been stopped at the Loan Office, and application is about to be made to Government for the issue of a duplicate Note in favor of the Executive Commissariat Officer, Cawnpore.

No. 10402 of 1854-55, at 4 per cent., for Rs. 1,000.

S. CHALMERS, *Capt.*,
Depy. Asst. Commy. Genl.

CAWNPORE EXE. COMMT. OFFICE,
The 18th February 1865.

NOTIFICATION.

The districts of East and West Berar having recently been sub-divided, the following Revised List of Districts comprised in the Hyderabad Assigned Districts is published for the guidance of Treasury Officers, with an intimation that Bills and Remittance Receipts cannot be drawn on the Deputy Commissioners of Maiker and Woon, who have no separate Treasuries attached to their respective Offices:—

List of Berar Districts.

Name.	Designation of Officers.
Akolah District Oomrawuttee ditto Maiker ditto Woon ditto	Deputy Commissioner.

J. ROSE,
Head Assistant in Charge
Depy. Audr. and Accts.
Genl.'s Office, Hyderabad.

OFFICE OF DEPY. AUDR. AND ACCTT. GENL., HYDERABAD,
Bolarum, 2nd February 1865.

BENGAL OFFICIAL ARMY LIST.

The *Bengal Official Quarterly Army List*, No. XI, corrected in the office of the Adjutant General up to the 1st of January 1865, is now ready. Price five Rupees *in advance*, and eight annas extra if sent by post. Apply to

CALCUTTA,
6, *Bankshall Street.* O. T. CUTTER, *Publisher.*

NOTICE.

The attention of all Treasury Officers dra... Bills on the General Treasury, Bank of Beng..., hereby called to the necessity of despatching ... advices of Bills drawn by them on the da... issue. Much inconvenience is frequently ex...enced owing to delay on the part of Office... charge of Treasuries in forwarding these Lett... Advices.

R. P. HARRISON,
Accti. Genl. to the Govt. of ...

FORT WILLIAM,
The 24th February 1865.

PRELIMINARY ANNOUNCEMENT

IMPORTANT INDIGO FACTORIES FOR SALE

To be sold by Public Auction on or abou... 20th instant (unless previously disposed ... private contract)—

By order of the Mortgagees,

The well-known Indigo Factories called ... Allumchund Concern, at Allahabad, with valu... Talook property attached thereto and Koo... crop now in the ground;

also

The Koorsun Factory, Allahabad, with Koonte crop, both lately the property of N. Flouest, Esq deceased. Further particulars and conditions o sale will be published, and in the mean while appl... cations to be made to Messrs. W. Moran and Co. Old Mint Mart, Calcutta, and Messrs. Barrow, Se... and Watson, Old Post Office Street, Calcutta.

NOTICE.

The Interest and Responsibility of Mr. Wal... Brett in the *Englishman* Press and Newspa... ceased on the 31st December 1864, by consent.

WALTER BRETT.
J. O'B. SAUNDERS,
Managing Proprietor,
"Englishman."

CALCUTTA,
22*nd February* 1865.

NOTIFICATION.

Whereas much inconvenience and difficulty experienced in the Loan and Interest Department of this Office in tracing endorsements and receip... for interest written across the reverse of Gover... ment Promissory Notes presented for renewal ... interest, notice is hereby given, with the sanctio... of Government, that in future cross receipts f... interest will not be accepted, or further intere... paid upon any note the reverse of which is filled u... The holders of notes so filled up can obtain new not... on application to the Loan Office, and on paymen... of the usual fees.

R. P. HARRISON,
Accti. Genl. to the Govt. of India

Printed and Published for the Government of India, by O. T. CUTTER, *at the Military Orphan Press.*

No. 10.

The Gazette of India.

Published by Authority.

CALCUTTA, SATURDAY, MARCH 11, 1865.

Home Department.

LEGISLATIVE.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd February 1865, and is hereby promulgated for general information:—

ACT No. IV OF 1865.

An Act to exempt the Estates of deceased Officers and Soldiers delivered over to the Administrator General of Bengal, Madras or Bombay, from the operation of the twenty-sixth Section of Act No. VIII of 1855.

Preamble.

WHEREAS under or by virtue of the twenty-sixth Section of Act No. VIII of 1855 *(to amend the Law relating to the Office and Duties of Administrator-General)*, the Administrator-General of each of the Presidencies of Fort William in Bengal, Fort St. George and Bombay is entitled to receive a commission at the rates respectively therein mentioned upon the amount or value of the assets which he shall collect and distribute in due course of administration; And whereas by the twenty-first Section of "The Regimental Debts Act, 1863," it is declared that an Administrator-General shall not be entitled to take, and it shall not be lawful for him to take, a percentage on the property of an Officer or Soldier dying on service exceeding three *per centum* on the gross amount coming to his hands if preferential charges have been previously paid, or on the gross amount remaining in his hands after payment by him of preferential charges, as the case may be; It is enacted as follows:—

Interpretation Clause.

1. In this Act—

"Officer."

The term "Officer" means a Commissioned Officer of Her Majesty's Army or of Her Majesty's Indian Army.

"Soldier."

The term "Soldier" means a Soldier of Her Majesty's Army or European Soldier of Her Majesty's Indian Army, including a Warrant and a Non-commissioned Officer.

Act VIII of 1855, Section 26, not to apply to property of Officers and Soldiers dying on service which shall come to hands of Administrator-General.

2. From and after the passing of this Act, the twenty-sixth Section of Act No. VIII of 1855 shall not apply to cases in which the property of an Officer or Soldier dying on service shall come to the hands of the Administrator-General of any of the said Presidencies, under the ninth or the twelfth Section of "The Regimental Debts Act, 1863;" and such Administrator-General shall not be entitled to take, and it shall not be lawful for him to take, a percentage on any such property exceeding three *per centum* on the gross amount coming to his hands after the passing of this Act, if preferential charges, as defined by the fourth Section of the said Statute, have been previously paid, or on the gross amount remaining in his hands after payment by him of such charges, as the case may be.

Administrator-General only entitled to a commission of three per cent. on gross amount of such property.

Short Title.

3. This Act shall be called "The Administrator General's Act, 1865."

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 23rd February 1865, and is hereby promulgated for general information:—

ACT No. V OF 1865.

An Act to provide for the solemnization of Marriages in India of persons professing the Christian Religion.

Preamble.

Whereas it is expedient to provide further for the solemnization of marriages in India of persons professing the Christian Religion; It is enacted as follows:—

Preliminary.

Short Title.

1. This Act may be cited as "The Indian Marriage Act, 1865."

Extent and commencement of Act.

2. This Act shall extend to all the territories that are or shall become vested in Her Majesty or her successors by the Statute 21 and 22 Vic., cap. 106, entitled "An Act for the better Government of India," and shall commence and come into operation on the first day of May 1865.

Act XXV of 1864 repealed.

3. From and after the commencement of this Act, Act No. XXV of 1864 is repealed except as to the recovery and application of any penalty for any offence which shall have been committed before such commencement.

Interpretation Clause.

4. In this Act, unless there is something repugnant in the subject or context—

"Church of England." "Anglican."

"Church of England" and "Anglican" mean and apply to the United Church of England and Ireland as by law established.

"Church of Scotland."

"Church of Scotland" means the Church of Scotland as by law established.

"Church of Rome." "Roman Catholic."

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head.

"Church."

"Church" shall include any Chapel or other building generally used for public Christian worship.

"Minor."

"Minor" means a person who has not completed the age of twenty-one years.

"Native Christians."

"Native Christians" includes the Christian descendants of Natives of India converted to Christianity as well as such converts.

"Section."

"Section" means a Section of this Act.

"Month" and "Year."

"Month" and "Year" respectively mean month and year reckoned according to the British calendar.

"Local Government."

And, in any part of British India in which this Act shall operate, "Local Government" shall mean the person authorized to administer Executive Government in such part.

PART I.

As to the persons by whom marriage may be solemnized.

Marriage between persons professing the Christian Religion to be solemnized according to the provisions of this Act.

5. From and after the commencement of this Act no marriage between persons one or both of whom shall profess the Christian Religion, shall be solemnized, unless in accordance with the provisions of the next following Section.

By whom to be solemnized.

6. Marriages may be solemnized in India—

(1.) By any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which such person is a Minister.

(2.) By any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland.

(3.) By, or in the presence of, a Marriage Registrar under the provisions of the Statute 14 and 15 Vic., cap. 40, or of Act V of 1852 *(for giving effect to the provisions of an Act of Parliament passed in the 15th year of the reign of Her present Majesty entituled an Act for Marriages in India)* of the Governor-General of India in Council.

(4.) By any Minister of Religion who, under the provisions of this Act, has obtained a license to solemnize marriages.

(5.) By any person who, with respect to marriages between Native Christians, shall have received under the provisions of Part V of this Act, a license to grant certificates of marriage.

Declaration and certificate no longer required.

7. From and after the commencement of this Act, the declaration and certificate required by the Statute 58 Geo. III, cap. 84, and Act XXIV of 1860 *(for the solemnization of marriages in India by ordained Ministers of the Church of Scotland)* of the Governor-General of India in Council, shall be no longer required.

Licenses to solemnize marriage by whom to be granted.

8. From and after the commencement of this Act the Governor-General of India in Council, the Governors of Madras and Bombay in Council, the Governor of the Settlement of Prince of Wales' Island, Singapore and Malacca, and the Lieutenant-Governors of Bengal, the North-Western Provinces and the Punjab, shall have authority to grant licenses to Ministers of Religion, to solemnize marriages within the territories under the immediate administration of such Governor-General, or subject to such Governors and Lieutenant-Governors respectively, and to revoke such licenses, whether they shall have been granted before or shall be granted after the passing of this Act.

Marriages solemnized otherwise than according to this Act to be void.

9. From and after the commencement of this Act, all marriages which shall be solemnized in India otherwise than in accordance with the provisions of the fifth and sixth Sections, shall be null and void.

Marriages solemnized before 1st May 1865 by certain persons to be deemed valid.

10. All marriages which shall have been solemnized in India before the commencement of this Act by persons who have not received episcopal ordination, or who have not otherwise received express authority to solemnize such marriages under Acts of Parliament or Acts of the Governor-General of India in Council, shall, if not otherwise invalid, be deemed valid to all intents and purposes.

PART II.

As to the mode of solemnizing Marriages under this Act.

Notice of intended marriage.

11. In every case of intended marriage between persons one or both of whom shall profess the Christian Religion, otherwise than—

1.—Under the provisions of the Statute 14 and 15 Vic., cap. 40, or of the said Act V of 1852 : or

2.—By a Clergyman who has received episcopal ordination according to the rites, rules, ceremonies and customs of the Church to which he belongs : or

3.—By a Clergyman of the Church of Scotland according to the rites, rules, ceremonies and customs of that Church : or

4.—By a person who has received a license to grant certificates of marriage between Native Christians under the provisions of Part V of this Act—

One of the persons intending marriage shall give notice in writing according to the form contained in the Schedule A to this Act annexed or to the like effect, to the Minister of Religion whom he or she shall desire to solemnize the marriage, and shall state therein the name or names, and the profession or condition, of each of the persons intending marriage, the dwelling place of each of them, and the time (not being less than four days) during which each has dwelt there, and the Church or private dwelling in which the marriage is to be solemnized. Provided that if either of such persons shall have dwelt in the place stated in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards. Provided also that at any place or Station where there is a Church, no Clergyman of the Church of England shall solemnize a marriage in a private dwelling or in any place except in such Church, unless he shall have received a special license authorizing him to do so from and under the hand and seal of the Anglican Bishop of the Diocese, or from the Commissary of such Bishop. For such special license the Registrar of the Diocese shall be entitled to charge such additional fee as the same Bishop may sanction.

Proviso.

12. The Minister of Religion to whom such notice shall have been delivered, if he shall be entitled to officiate in the Church in which it is intended to solemnize the said marriage, shall publish every notice of marriage received by him, by causing the same to be published and affixed in some conspicuous part of the same Church. If such Minister of Religion shall not be entitled to officiate as a Minister in such Church, he shall at his option either return the said notice to the person delivering the same to him, or shall deliver the same to some other Minister entitled to officiate therein, who shall thereupon cause the same to be so published and affixed as aforesaid.

Publication of such notice.

13. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion on receiving the notice prescribed in the eleventh Section shall forward it to the Marriage Registrar of the District, who shall affix the same to some conspicuous place in his own Office.

Notice of intended marriage in private dwelling.

14. When one of the persons intending marriage (not being a widow or widower) is a minor, every such Minister as aforesaid who shall receive such notice, and who shall not forthwith return it to the person delivering the same under the twelfth Section shall, within twenty-four hours after the receipt by him thereof, send or cause to be sent by the Post, or otherwise, a copy of such notice to the Marriage Registrar of the District.

Notice when one of the persons intending marriage is a minor.

15. The Marriage Registrar of the District on receiving any such notice shall affix the same to some conspicuous place in his own Office.

Publication of such notice.

16. If there be more Marriage Registrars than one in any District, the local Government shall appoint one of such Registrars to be Senior Marriage Registrar, and such notice as aforesaid shall be sent to such Senior Marriage Registrar, who, on receiving the same, shall, besides affixing it in the manner laid down in the last preceding Section, cause a copy thereof to be sent to each of the other Marriage Registrars in the same District, who shall likewise affix the same in their own Offices or Churches, as aforesaid.

Appointment of Senior Marriage Registrar.

17. Any Minister of Religion who shall consent or intend to solemnize any such marriage as aforesaid, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making such declaration as is hereinafter required, shall issue under his hand a certificate of such notice having been given and of such declaration having been made : Provided that no lawful impediment according to the law of England be shown to the satisfaction of such Minister why such certificate should not issue, and the issue of such certificate shall not have been sooner forbidden in the manner hereinafter mentioned, by any person authorized in that behalf.

Issue of certificate of notice given and declaration made.

Proviso.

18. When by such declaration it appears, or when it is otherwise known to such Minister of Religion, that either of the persons intending marriage, not being a widower or widow, is a minor, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of such notice of marriage.

In case of minority certificate not to issue until fourteen days after receipt of notice.

19. Before any such certificate as aforesaid shall be issued by any such Minister, one of the persons intending marriage shall appear personally before such Minister, and shall make a solemn declaration that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage, and when either or both of the parties, not being a widower or widow, is or are a minor or minors, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is or are no person or persons resident in India having authority to give such consent, as the case may be.

Declaration to be made before issue of certificate.

20. The father, if living, of any minor not being a widower or widow, or, if the father be dead, the guardian of the person of such minor and, in case there be no such guardian, then the mother of such minor,

Consent of parent or guardian when necessary.

shall have authority to give consent to the minor's marriage, and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

What persons may prohibit issue of certificate by notice.

21. Every person whose consent to a marriage is required as aforesaid, is hereby authorized to prohibit the issue of the certificate by any Minister as aforesaid, at any time before the issue of such certificate, by notice in writing to such Minister, subscribed by the person so authorized with his name and place of abode, and his or her position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

Procedure of Minister on receipt of such notice.

22. If any such notice prohibiting the marriage shall be received by such Minister as aforesaid, he shall not issue his certificate, and shall not solemnize the said marriage until he shall have examined into the matter of the said prohibition, and shall be satisfied that the person prohibiting the marriage is not authorized by law so to do, or until the said notice be withdrawn by the person who gave it.

Proceedings before issue of certificate in the case of Native Christians.

23. When any Native Christian about to be married shall take a notice of marriage to a Minister of Religion, or shall apply for a certificate from such Minister under the seventeenth Section, such Minister shall, before issuing such certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and if not, shall translate or cause to be translated such notice or certificate to such Native Christian into his language, or into some language which he understands.

Form of certificate.

24. The certificate to be issued by such Minister as aforesaid, may be in the form contained in the Schedule B to this Act annexed, or to the like effect.

After issue of certificate, marriage may be solemnized.

25. After the issue of the certificate by such Minister of Religion, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister shall think fit to adopt: Provided that the marriage be solemnized in the presence of at least two witnesses.

Certificate to be void if marriage be not solemnized within two months.

26. Whenever a marriage is not solemnized within two months after the date of the certificate which shall have been issued by such Minister as aforesaid, such certificate and all other proceedings thereon shall be void, and no person shall proceed to solemnize the said marriage until new notice shall have been given and a certificate thereof issued in the manner aforesaid.

Proof of marriage in accordance with the provisions of Part I of this Act.

27. Provided that whenever any marriage has been solemnized by a Minister of Religion in accordance with the provisions of Part I of this Act, it shall not be necessary in support of such marriage to give any proof in respect of the dwelling of the persons married, or of the consent of any person whose consent to such marriage is required by law, or of the notice of marriage, or of the certificate or the translation thereof respectively, or in respect of the hours between which the same may have been solemnized; nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage.

Part III.

As to the time for solemnizing Marriages.

Hours between which marriages to be solemnized.

28. Every marriage solemnized in India from and after the commencement of this Act by any person who has received episcopal ordination, or by any Clergyman of the Church of Scotland, or by any Minister licensed under this Act to solemnize marriages, shall be solemnized between the hours of six in the morning and seven in the evening: Provided that this Section shall not apply to a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, from and under the hand and seal of the Anglican Bishop of the Diocese or his Commissary; and it is hereby declared that for such special license the Registrar of the Diocese shall be entitled to charge such additional fee as such Bishop may sanction: Provided also that this Section shall not apply to a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he shall have received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage shall so be solemnized, or from such person as the same Bishop shall have authorized to grant such license.

Proviso.

Part IV.

As to the Registration of Marriages in India.

Marriages with certain exceptions to be registered as hereinafter prescribed.

29. All marriages solemnized in India from and after the commencement of this Act between persons both or one of whom shall profess the Christian Religion, except marriages solemnized under the said Statute 14 and 15 Vic., cap. 40 and the said Act V of 1852, shall be registered in the manner hereinafter prescribed: Provided that no omission or defect in such registration shall invalidate any marriage not otherwise invalid.

Proviso.

Registration of marriages solemnized by Clergymen of the Church of England.

30. Every marriage solemnized by a Clergyman of the Church of England shall be registered by the Clergyman solemnizing the same in the Register of Marriages of the Station or District in which the marriage shall be solemnized, according to the form contained in the Schedule C to this Act annexed.

Quarterly Returns to Archdeaconry.

31. Every Clergyman of the Church of England shall send four times in every year Returns in duplicate, authenticated by the signature of such Clergyman, of the entries in the

Register of Marriages solemnized at or in any Station or District at which such Clergyman shall have any spiritual charge, to the Registrar of the Archdeaconry to which he shall be subject or within the limits of which such Station or District shall be situated. Such Quarterly Returns shall contain all the entries of marriages contained in the said Register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year respectively, and shall be transmitted by such Clergyman within two weeks from the expiration of each of the quarters above specified. The said Registrar upon receiving the same shall transmit one duplicate to the Secretary to the Local Government.

Registration and Returns of marriages solemnized by Clergymen of the Church of Rome.

32. Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage shall be solemnized; and such person shall forward quarterly to the Secretary to the Local Government Returns of the entries of all marriages registered by him during the three months next preceding.

Registration and Returns of marriages solemnized by Clergymen of the Church of Scotland.

33. Every marriage solemnized by a Clergyman of the Church of Scotland shall be registered by the Clergyman solemnizing the same in a Register of Marriages to be kept by him for the Station or District in which the marriage shall be solemnized, in the form prescribed in the thirtieth Section for marriages solemnized by Clergymen of the Church of England, and such Clergyman shall forward quarterly to the Secretary to Government, through the Senior Chaplain of the Church of Scotland in the territory subject to the Local Government, Returns similar to those prescribed in the thirty-first Section for Clergymen of the Church of England, of all marriages solemnized by him.

Marriages solemnized by certain persons to be entered in a Register Book and also in a certificate.

34. After the solemnization of any marriage under this Act by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England nor of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, the person solemnizing the same shall forthwith register such marriage in duplicate—that is to say, in a Marriage Register Book to be kept by him for that purpose, according to the form contained in the Schedule D to this Act annexed, and also in a certificate attached to the Marriage Register Book as a counterfoil.

Such entries to be signed and attested.

35. The entry of such marriage in both the certificate and Marriage Register Book shall be signed by the person by whom the said marriage has been solemnized and also by the persons married, and shall be attested by two credible witnesses who were present at the solemnization of the marriage, and every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the Marriage Register Book.

Such certificate to be forwarded to Marriage Registrar, copied, and transmitted to Government.

36. The person solemnizing the said marriage shall forthwith separate the certificate from the Marriage Register Book, and transmit it within one month from the time of the solemnization of such marriage to the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall cause such certificate to be copied into a book to be kept by him for that purpose, and shall transmit all the certificates which he shall have received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Secretary to the Local Government, together with the certificates from his own Marriage Register Book which he shall transmit under the twelfth Section of the said Statute 14 and 15 Vic., cap. 40, but distinct therefrom.

Copies of certificates to be entered and numbered.

37. Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which each certificate was received by the said Marriage Registrar.

Registrar to add number of entry of copy to the certificate, and send same to Government.

38. The Marriage Registrar shall also add such last mentioned number of the entry of the copy in the book, to the certificate, with his signature or initials, and shall at the end of every month transmit the same to the Secretary to the Local Government.

Custody and disposal of Register Book of Marriages solemnized under Part V of this Act.

39. The person solemnizing any such marriage as is provided for in Part V of this Act, shall keep safely the said Register Book until the same shall be filled, or if he shall leave the District in which he solemnized the marriage before the said book is filled, shall make over the same to the person who shall succeed to his duties in the said district, who shall keep safely the same, and shall make therein the entries by this Act required to be made in respect of any marriage solemnized by him within the said district; and the person having the control of the book at the time when it shall be filled, shall send the same to the Marriage Registrar of the District, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the Secretary to the Local Government to be kept by him with the records of his Office.

Transmission of certificates of certain marriages to Secretary of State for India.

40. The Secretary to the Local Government shall, at the end of every quarter in each year, select from the certificates of marriages forwarded to him during such quarter, the certificates of the marriages of which the Governor-General of India

in Council may desire that evidence shall be transmitted to England, and forward the same certificates signed by him, to the Secretary of State for India, for the purpose of being delivered to the Registrar General of Births, Deaths and Marriages.

Correction of errors.

41. Any person charged with the duty of registering any marriage, who shall discover any error to have been committed in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses who shall respectively attest the same, correct the erroneous entry according to the truth of the case, by entry in the margin without any alteration of the original entry, and shall sign the marginal entry, and add thereunto the day of the month and year when such correction shall be made, and such person shall make the like marginal entry, attested in the like manner, in the certificate thereof; and in case such certificate shall have been already transmitted to the Secretary to the Local Government, such person shall make and transmit in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

Searches may be made and copies of certificates given.

42. Every person solemnizing a marriage under this Act and hereby required to register the same, and every Marriage Registrar or Secretary to a Local Government who shall have the custody for the time being of any Register of Marriages, or of any certificate or copies of certificate under this Act, shall at all reasonable times allow searches to be made of any Marriage Register Book, or of any certificate, or duplicate, or copies of certificate in his custody, and shall give a copy under his hand of any entry or entries in the same on the payment of the fees hereinafter mentioned: that is, for every search extending over a period of not more than one year, the sum of one Rupee, and four annas additional for every additional year, and the sum of one Rupee for every single certificate.

Appropriation of fees.

43. All fees received under the provisions of this Act by a Marriage Registrar or Secretary shall be accounted for and paid over by him to Government, and all fees received by a person solemnizing a marriage not being a Marriage Registrar, may be retained by such person.

Certified copy of entry in Marriage Register, &c., to be received as evidence of marriage without further proof.

44. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any Marriage Regester or certificate or duplicate certificate required to be kept or delivered under this Act, of any entry of a marriage in such Register, or of any such certificate or duplicate certificate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such Register or certificate, or duplicate copy, or of any entry therein respectively, or of such copy.

These provisions not to apply to Registers or certificates of certain marriages solemnized by Marriage Registrars.

45. Nothing contained in this Part shall apply to the Register or certificate of any marriage solemnized under the said Statute 14 and 15 Vic., cap. 40, or the said Act V of 1852.

Marriage Registrars to be Christians and may be appointed *ex-officio*.

46. Every Marriage Registrar hereafter appointed under the provisions of Act V of 1852 shall be a Christian, and may be so appointed either by name or as holding any office for the time being.

PART V.

As to the Marriage of Native Christians.

Power to license persons to grant certificates of Marriage between Native Christians.

47. And whereas it is expedient to make provision for the marriage of Native Christians to whom the provisions of the said Statute 14 and 15 Vic., cap. 40, and the said Act V of 1852 are found not to be suitable, it is further enacted that it shall be lawful for the Local Government or the Chief Commissioner of any Province, to issue a license to any person being a Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians. Any such license may be revoked by the Government or Chief Commissioner by whom it was granted; and every such grant or revocation shall be notified in the Official Gazette.

Certificate may be given without previous notice of marriage.

48. It shall not be a necessary preliminary to the grant of a certificate by any person licensed under the last preceding Section, that any notice of marriage should have been given by either of the parties to such marriage, or that any certificate should have been issued of any notice having been given under the provisions of the said Act V of 1852 or otherwise; and every marriage between Native Christians as aforesaid applying for a certificate under this Part of this Act, shall be certified under this Part of this Act if the following conditions be fulfilled, and not otherwise:—

Conditions.

(1.) The age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years:

(2.) The man and the woman shall not stand to each other within the prohibited degrees of consanguinity or affinity:

(3.) Neither of the persons intending to be married shall have a wife or husband still living:

(4.) In the presence of the person so licensed and of at least two credible witnesses, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, A. B., in the presence of Almighty God and in the name of our Lord Jesus Christ do take thee, C. D., to be my lawful wedded wife *(or husband)*," or words to the like effect:

(5.) Such declaration shall be made between the hours of six in the morning and seven in the evening.

49. When in respect to any marriage falling under this Part of this Act, the conditions prescribed in the last preceding Section shall have been fulfilled, it shall be the duty of the person licensed as aforesaid, in whose presence the said declaration shall have been made, to grant a certificate of such marriage on the application of either of the parties to such marriage on the payment of a fee of four annas. Such certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage, as conclusive evidence of the same marriage having been performed, and no evidence to the contrary shall be received in any such suit.

On marriage (the conditions having been fulfilled), licensed person to grant a certificate thereof.

50. All marriages performed between Native Christians as aforesaid, in accordance with the provisions of the forty-eighth Section, shall be valid.

Marriages performed under the provisions of Section 48 to be valid.

51. A Register Book of all marriages of which certificates shall be granted under the forty-eighth Section shall be kept by the person granting such certificates in his own vernacular language. Such Register Book shall be kept according to such form as the Local Government or Chief Commissioner shall from time to time prescribe, and true extracts therefrom duly authenticated shall be deposited at such places and at such times as the Local Government or Chief Commissioner shall direct.

Register Book to be kept.

52. Every person licensed under this Act to grant certificates of marriage and who shall have the custody of a Marriage Register Book under the last preceding Section, shall at all reasonable times allow search to be made in such book in his custody, and shall give a copy certified under his hand of any entry or entries in the same on the payment of the fees hereinafter mentioned: that is to say—for every search extending over a period not exceeding two years the sum of eight annas, and two annas additional for every additional year.

Searches to be allowed in the Register Book.

53. This Part of this Act shall not apply to marriages between Roman Catholics. But nothing herein contained shall be construed to invalidate any marriage contracted between Roman Catholics under the provisions of Part V of the said Act No. XXV of 1864.

Part V not to apply to Roman Catholics.

Part VI.

As to Penalties.

54. Whoever intentionally makes any false oath or declaration, or signs any false notice or certificate required by the said Statute 14 and 15 Vic., cap. 40, or the said Act V of 1852, or by this Act, for the purpose of procuring any marriage, shall be guilty of the offence described in the hundred and ninety-third Section of the Indian Penal Code, and on conviction shall be liable to the punishment prescribed in that Section.

Punishment for false oath, declaration, notice, or certificate, for procuring marriage.

55. Whoever forbids the issue by a Marriage Registrar of a certificate, by falsely representing himself or herself to be a person whose consent to the marriage is required by law, knowing such representation to be false, shall be guilty of the offence described in the hundred and fifth Section of the Indian Penal Code, and shall on conviction be liable to the punishment prescribed in that Section.

Punishment for forbidding the issue by a Marriage Registrar of a certificate by false representation.

56. Whoever, not being authorized under the sixth Section to solemnize a marriage shall, from and after the commencement of this Act, in the absence of a Marriage Registrar of the District in which such marriage is solemnized, knowingly and wilfully solemnize a marriage between persons one or both of whom shall profess the Christian Religion, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, which may extend to ten years, and shall also be liable to fine; or in lieu of a sentence of imprisonment for seven years or upwards, to transportation for a term of not less than seven years and not exceeding ten years; or if the offender be an European or American, to penal servitude according to the provisions of Act XXIV of 1855 *(to substitute penal servitude for the punishment of transportation in respect of European and American Convicts, and to amend the law relating to the removal of such Convicts)*.

Punishment for a person not duly authorized, solemnizing a marriage.

57. Whoever shall, from and after the commencement of this Act, knowingly and wilfully solemnize a marriage between persons, one or both of whom shall be a person or persons professing the Christian Religion, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to three years, and shall also be liable to fine.

Punishment for solemnizing a marriage otherwise than between six A. M. and seven P. M. or without witnesses.

58. The provisions of the last preceding Section shall not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he shall have received the general or special license in that behalf mentioned in the twenty-eighth Section.

Section 57 not to apply to marriages solemnized under licenses.

59. Any Minister of Religion licensed to solemnize marriages under this Act, who shall, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnize a marriage, when one of the parties to such marriage, not being a widower or widow, is a minor, shall be punished with imprisonment of either description, as defined in

Punishment for solemnizing marriage when either party is a minor within a certain time after notice.

the Indian Penal Code, for a term which may extend to three years, and shall also be liable to fine. But the provisions of this Section shall not apply to marriages solemnized between Native Christians under the provisions of Part V of this Act.

Punishment for Registrars issuing certificates, or solemnizing marriages, without publication of notice, &c.

60. Whoever, being a Marriage Registrar appointed under the provisions of the said Act V of 1852, shall knowingly and wilfully issue any certificate for marriage, or solemnize any marriage under the same Act without publishing or affixing in some conspicuous place the notice of such marriage as directed by such Act; or after expiration of two months after a certificate in respect of a marriage shall have been issued by him shall solemnize such marriage, or shall, without an order of a competent Court authorizing him to do so, solemnize any marriage when one of the persons intending marriage (not being a widow or widower) is a minor, before the expiration of fourteen days after the receipt of such notice as is required by the same Act, or without sending or causing to be sent by the Post or otherwise a copy of such notice of marriage to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar, or shall issue any certificate, the issue of which shall have been prohibited as in this Act provided by any person authorized to prohibit the issue thereof, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to five years, and shall also be liable to fine.

Punishment for persons authorized under this Act, but not being Clergymen of the Churches of England, Scotland or Rome solemnizing marriages without publication of notices, &c.

61. Whoever, being a person authorized under the provisions of this Act to solemnize a marriage, and not being a Clergyman of the Church of England solemnizing a marriage after due publication of Banns or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf, or not being a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of that Church, or not being a Clergyman of the Church of Rome solemnizing a marriage according to the rites, rules, ceremonies and customs of that Church, shall knowingly and wilfully issue any certificate for marriage under this Act, or solemnize any marriage between such persons as aforesaid, without publishing or causing to be affixed the notice of such marriage as directed in Part II of this Act, or after the expiration of two months after the certificate shall have been issued by him; or shall knowingly and wilfully issue any certificate for marriage, or solemnize a marriage between such persons, when one of the persons intending marriage, not being a widower or widow, is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending or causing to be sent by the Post or otherwise a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the District; or shall knowingly and wilfully issue any certificate, the issue of which shall have been forbidden under this Act, by any person authorized to forbid the issue; or shall knowingly and wilfully solemnize any marriage which shall have been forbidden by any person authorized to forbid the same, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to four years, and shall also be liable to fine.

Punishment for unlicensed person pretending to grant certificate of marriage under Part V.

62. Whoever not being licensed to grant a certificate of marriage under Part V of this Act, shall grant such certificate, intending thereby to make it appear that he is so licensed, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to five years, and shall also be liable to fine.

Punishment for destroying or falsifying Register Books.

63. Whoever shall willfully destroy or injure or cause to be destroyed or injured any such Register Book, or any part thereof, or any such authenticated extract therefrom as aforesaid, or shall wilfully insert or cause to be inserted any false entry in any such Register Book or authenticated extract, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to seven years, and shall also be liable to fine.

Jurisdiction to try persons for offences punishable under this Act.

64. Persons tried for offences punishable under this Act shall be tried under the provisions of the Code of Criminal Procedure by the Court of Session as defined in the same Code: Provided that no European British subject shall be liable to be tried for any offence punishable under this Act except before a Judge of the High Court. In every case in which an European British subject shall be charged before a Justice of the Peace or Magistrate at any place beyond the local limits of the ordinary original Civil Jurisdiction of the High Court with any offence under this Act, such charge shall be investigated, and the committal and trial for such offence shall be made and held according to the rules by which the Criminal Procedure of the High Court may from time to time be regulated.

Code of Criminal Procedure applicable to investigations and committals under this Act.

65. Except as provided in the last preceding Section, the provisions of the Code of Criminal Procedure shall apply to the investigation and committal in all cases of charges under this Act: Provided that a summons shall ordinarily issue in the first instance, and that all offences punishable under this Act shall be bailable.

Supreme Court of Straits' Settlement to try and punish offences under this Act.

66. The Supreme Court of Judicature in the Settlement of Prince of Wales' Island, Singapore and Malacca shall have power to try offences punishable under this Act and committed within the limits of such Settlement. The charge for any such offence shall be investigated and the committals shall be made under the procedure by which such Court shall from time to time be regulated. The penalties (if any) imposed on persons charged as aforesaid shall correspond as nearly as may be with the penalties which might have been imposed on such persons had the Indian Penal Code been then in force in the said Settlement.

SCHEDULE A—(See Section 11.)

Notice of Marriage.

To *the Reverend John Brown*, a Minister of the *Free Church of Scotland, at Calcutta.*

I hereby give you notice, that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say),

Name.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church, Chapel or place of worship, in which the marriage is to be solemnized.	District in which the other party resides when the parties dwell in different Districts.
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	*16, Clive Street.*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	.....	*Minor.*	*20, Hastings' Street.*	*More than a month.*		

Witness my hand, this *sixth* day of *July, one thousand eight hundred and sixty-five.*

(Signed) *James Smith.*

(The *Italics* in this Schedule are to be filled up as the case may be and the blank division thereof is only to be filled up when one of the parties lives in another District.)

SCHEDULE B—(See Section 24.)

Registrar's Certificate.

I, *the Reverend John Brown, Minister of the Free Church of Scotland at Calcutta in Bengal*, do hereby certify, that on the *sixth* day of *July* 1865, notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of *James Smith*, one of the parties (that is to say),

Names.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church, Chapel or place of worship, in which the marriage is to be solemnized.	District in which the other party resides when the parties dwell in different Districts.
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	*16, Clive Street.*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	.....	*Minor.*	*20, Hastings' Street.*	*More than a month.*		

and that the declaration required by Section 19 of "The Indian Marriage Act, 1865, has been duly made by the said (*James Smith*).

Date of notice entered *sixth July* 1865. } The issue of this Certificate has not been prohibited
Date of certificate given *twentieth July* 1865. } by any person authorized to forbid the issue thereof.

Witness my hand, this *Twentieth* day of *July one thousand eight hundred and sixty-five,*

(Signed) *John Brown,*
Minister of the Free Church of Scotland.

This Certificate will be void unless the marriage is solemnized on or before the *twentieth* day of *September* 1865.

(The *Italics* in the Schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another District.)

SCHEDULE C.—(See Section 30.)

Form of Register of Marriages.

Quarterly Returns
of
MARRIAGES
for
The Archdeaconry of ... { *Calcutta,* / *Madras,* / *Bombay,*

I Registrar of the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } do hereby certify, that the annexed are correct copies of the original and official Quarterly Returns of Marriages within the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } as made and transmitted to me for the Quarter commencing the *First* day of *October* ending the *Thirty-first* day of *December,* in the Year of Our Lord *One Thousand Eight Hundred and Sixty-five.*

Signature of Registrar.

Registrar of the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay.*

MARRIAGES solemnized at { *Allahabad,* / *Barrackpore,* / *Bareilly,* / *Calcutta, &c., &c.*

When married.			Names of Parties.		Age.	Condition.	Rank or Profession.	Residence at the time of marriage.	Father's Name and Surname.	By Banns or License.	Signatures of the Parties.	Signatures of two or more Witnesses present.	Signature by whom married.
Year.	Month.	Day.	Christian.	Surname.									

SCHEDULE D.—(See Section 34.)

MARRIAGE REGISTER BOOK.

No.	When Married.			Name of Parties.		Age.	Condition.	Rank or Profession.	Residence at the time of Marriage.	Father's name and surname.
	Day.	Month.	Year.	Christian.	Surname.					
1	26th	July	1865	James ...	White ...	26 years	Widower.	Carpenter	Agra ..	Wm. White.
				Martha ..	Duncan...	17 years	Spinster .	.....	Agra..	John Duncan.

Married in the Free Church of Scotland Church, Agra.

John Young, Minister of the Free Church of Scotland.

This Marriage was solemnized between us { *James White* / *Martha Duncan*, } In the presence of us { *John Smith.* / *John Green.* }

CERTIFICATE OF MARRIAGE.

No.	When Married.			Name of Parties.		Age.	Condition.	Rank or Profession.	Residence at the time of Marriage.	Father's name and surname.
	Day.	Month.	Year.	Christian.	Surname.					
1	26th	July	1865	James ...	White ...	26 years	Widower.	Carpenter	Agra	Wm. White.
				Martha ..	Duncan...	17 years	Spinster..	... .	Agra ..	John Duncan.

Married in the Free Church of Scotland Church, Agra.

John Young, Minister of the Free Church of Scotland.

This Marriage was solemnized between us { *James White* / *Martha Duncan*, } In the presence of us { *John Smith.* / *John Green.* }

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd February 1865, and is hereby promulgated for general information :—

Act No. VI of 1865.

An Act to continue Act No. XXXI of 1860.

Preamble.

Whereas Act No. XXXI of 1860 *(relating to the manufacture, importation, and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases)*, is limited to expire on the first day of October 1865; and whereas it is expedient to continue such Act for a limited period; It is enacted as follows :—

Act XXXI of 1860 continued.

1. Act No. XXXI of 1860 shall continue in force until the first day of October 1866.

Short Title.

2. This Act may be cited as "The Arms' Act Continuance Act, 1865."

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 24th February 1865, and is hereby promulgated for general information :—

Act No. VII of 1865.

An Act to give effect to rules for the management and preservation of Government Forests.

Preamble.

Whereas it is expedient that Rules having the force of law should be made from time to time for the better management and preservation of Forests wherein rights are vested in Her Majesty for the purposes of the Government of India; It is enacted as follows :—

Interpretation clause.

1. In this Act, unless there be something repugnant in the subject or context—

"Government Forests."

"Government Forests" shall mean such land covered with trees, brushwood, or jungle, as shall be declared in accordance with the second Section of this Act to be subject to its provisions.

"Magistrate."

"Magistrate" shall mean the Chief Officer charged with the Executive administration of a district or place in criminal matters by whatever designation such officer is called, and shall include any person invested by the Local Government with the powers of a Magistrate or of a subordinate Magistrate as defined in the Code of Criminal Procedure with a view to the exercise by him of such powers under this Act.

"Local Government."

And in every part of British India in which this Act operates, "Local Government" denotes the persons authorized to administer Executive Government in such part, and includes the Chief Commissioner of any part of British India under the immediate administration of the Governor-General of India in Council whenever such Chief Commissioner is authorized by the Governor-General in Council to exercise the powers of a Local Government under this Act.

Governor-General in Council and the Local Governments may render certain lands subject to the provisions of this Act.

2. The Governor-General of India in Council within the Provinces under his immediate administration, and the Local Governments within the Territories under their control, may, by notification in the Official Gazette, render subject to the provisions of this Act, such land covered with trees, brushwood, or jungle, as they may define for the purpose by such notification: Provided that such notification shall not abridge or affect any existing rights of individuals or communities.

Local Governments may make Rules for management and preservation of Forests, and for regulating the conduct of persons employed on them.

3. For the management and preservation of any Government Forests or any part thereof in the Territories under their control, the Local Governments may, subject to the confirmation hereinafter mentioned, make Rules in respect of the matters hereinafter declared, and from time to time may, subject to the like confirmation, repeal, alter, and amend the same. Such Rules shall not be repugnant to any law in force.

What may be provided for by Rules made in pursuance of this Act.

4. Rules made in pursuance of this Act may provide for the following matters :—

First.—The preservation of all growing trees, shrubs, and plants within Government Forests or of certain kinds only—by prohibiting the marking, girdling, felling, and lopping thereof, and all kinds of injury thereto; by prohibiting the kindling of fires so as to endanger such trees, shrubs, and plants; by prohibiting the collecting and removing of leaves, fruits, grass, wood-oil, resin, wax, honey, elephant's tusks, horns, skins and hides, stones, lime, or any natural produce of such Forests; by prohibiting the ingress into and the passage through such Forests, except on authorized roads and paths; by prohibiting cultivation and the burning of lime and charcoal, and the grazing of cattle within such Forests.

Second.—The regulation of the use of streams and canals passing through or coming from Government Forests or used for the transport of timber or other the produce of such Forests—by prohibiting the closing or blocking up for any purposes whatsoever of streams or canals used or required for the transport of timber or Forest produce; by prohibiting the poisoning of or otherwise interfering with streams and waters in Government Forests in such a manner as to render the water unfit for use; by regulating and restricting the mode by which timber shall be permitted to be floated down rivers flowing through or from Government Forests and removed from the same; by authorizing the stoppage of all floating timber at certain Stations on such rivers within or without the limits of Government Forests for the purpose of levying the dues or revenues lawfully payable thereon; by authorizing the collecting of all timber adrift on such rivers, and the disposal of the same belonging to the Government.

Third.—The safe custody of timber the produce of Government Forests—by regulating the manner in which timber, being the produce of Government Forests, shall be felled or converted; by prohi-

biting the converting or cutting into pieces or burning of any timber, or the disposal of such timber by sale or otherwise, by any person not the lawful owner of such timber, or not acting on behalf of the owner; by regulating the manner in which property-marks shall be affixed to timber and other Forest produce in Government Forests; by prohibiting the affixing of property-marks to timber by any person not the owner of the timber or acting on behalf of the owner so long as such timber shall be within certain territorial limits, or shall be in transit on certain rivers; by prohibiting within certain territorial limits the effacing or alteration of property-marks on timber; by prohibiting, within such limits, the use of the property-marks employed by the Government, or the fraudulent use of the property-marks of private persons; by requiring the registry within certain territorial limits of implements for affixing property-marks on timber; by directing the levying of fees for the registration of such implements.

Fourth.—The regulation of the duties of the Government Officers and establishments charged with the management and conservancy of Government Forests and with the levy of Forest dues and revenues—by prohibiting their engaging in any employment or office other than their duties as public servants; by fixing penalties for the wilful neglect of the Rules laid down for the guidance of such persons in all matters connected with the guarding of the boundaries of the Forests, the marking, girdling or felling of trees, the marking and passing of timber, the reporting and preventing of offences against the Rules made in pursuance of this Act and the collecting of Forest dues or revenues.

Power to Local Government to prescribe punishments for infringement of Rules.

5. In cases where the penalty of confiscation is not provided by this Act, the Local Government may prescribe punishments for the infringement of Rules made in pursuance thereof, by fine not exceeding five hundred rupees, and in default of payment of such fine may provide for the imprisonment of the offender for such term as is mentioned in the sixty-seventh Section of the Indian Penal Code.

Rules when confirmed and published to have the force of law.

6. Such Rules when confirmed by the Governor-General in Council and published in the Official Gazette shall have the force of law.

Confiscation in case of infringement of Rules.

7. All implements used in infringing any of the Rules made in pursuance of this Act, and all timber or other Forest produce, removed or attempted to be removed, or marked, converted, or cut up contrary to such Rules, shall be confiscated.

Arrest and seizure in case of infringement of Rules.

8. Any Police Officer or person employed as an Officer of Government to prevent infringement of the Rules made in pursuance of this Act may arrest any person infringing any of such Rules, and may seize any implements used in such infringement, and any timber liable to confiscation under this Act.

Procedure in case of arrest.

9. Any person arrested on the ground that he has committed an infringement of such Rules shall forthwith be taken before a Magistrate, who may, if he see reasonable cause, order such person to be detained in custody until the case shall have been disposed of.

The causing or procuring a punishable act to be done is punishable in the same manner as the doing of the act.

10. Where the doing of any act is made punishable by this Act, or by any of the Rules to be made in pursuance thereof, with any penalty, the causing or procuring such act to be done shall be punishable in like manner.

Procedure in respect of property seized as liable to confiscation.

11. When any timber or other property shall be seized as liable to confiscation under this Act any Magistrate or Officer empowered to enforce penalties under this Act within the district or division of a district wherein the same may be seized, may, upon information, summon the person in possession of such timber or other property, and upon his appearance, or in default thereof, may examine into the cause of the seizure of such timber or other property, and may adjudge the same to be confiscated and sold on account of the Government.

Penalty for vexatious seizures and arrests.

12. Any Police Officer or Officer of Government who shall vexatiously and unnecessarily seize the goods or chattels of any person, under the pretence of seizing property liable to confiscation, or who shall vexatiously and unnecessarily arrest any person, or commit any other excess beyond what is required for the execution of his duty, shall be liable to a fine not exceeding five hundred Rupees, or to imprisonment of either description as defined in the Indian Penal Code for a term not exceeding three months.

Enforcement of confiscations and penalties under Rules.

13. All fines and penalties under the Rules made in pursuance of this Act shall be enforced by a Magistrate in the manner prescribed by the Code of Criminal Procedure, and the Rules therein contained for the trial of cases and for appeals shall be applicable to confiscations adjudged under this Act.

Property on confiscation to vest in Her Majesty.

14. When the confiscation of any property shall be adjudged under the last preceding Section, the same shall thereupon belong to and vest in Her Majesty, and a Warrant shall be issued by the Court to a Police Officer directing him to hold the property confiscated at the disposal of the Local Government.

Remission of penalties.

15. When any confiscation or penalty shall be adjudged under this Act, the local Governments may, within three months after final judgment, call for the proceedings of the case, and, if they shall see cause, may direct that the seizure or any part thereof be restored, and may remit the penalty or part thereof, and direct that the offender be discharged.

Limitation of suits under this Act.

16. No suit or other proceeding shall be commenced against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended suit or other proceeding and of the cause thereof; nor after the expiration of three months from the accrual of the cause of suit or other proceeding.

Period within which charges to be brought.

17. No charge of an offence under this Act shall be instituted except within six months after the commission of such offence.

Extent of Act.

18. This Act shall extend to all the Territories under the immediate administration of the Government of India and under the Governments of Bengal, the North-Western Provinces and the Punjab; and it shall be lawful for the Governors in Council of Madras and Bombay respectively, by notification in the Official Gazette, to extend this Act to the Territories under their respective Governments.

Commencement of Act. Short Title.

19. This Act shall come into operation on the first day of May 1865, and may be cited as "The Government Forests' Act, 1865."

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor General on the 24th February 1865, and is hereby promulgated for general information :—

ACT No. VIII OF 1865.

An Act to make valid the imprisonment of certain persons arrested under the process of the High Court of Judicature at Fort William in Bengal in the exercise of its ordinary original Civil jurisdiction.

Preamble.

Whereas it is expedient to make valid the imprisonment of certain persons arrested under the process of the High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original Civil jurisdiction, and to indemnify the Sheriff of the said High Court and others in respect of such imprisonment; It is enacted as follows :—

Arrests, &c., heretofore made to be deemed good, though not in accordance with the Civil Procedure Code.

1. All arrests made subsequently to the establishment of the High Court of Judicature at Fort William in Bengal and before the passing of this Act, in execution of any process issued by the said Court in the exercise of its ordinary original Civil jurisdiction, and the detention and imprisonment of all persons so arrested shall for all purposes be deemed to be and always to have been as valid and effectual as if such arrests, detentions and imprisonments had been in accordance with the provisions of the Code of Civil Procedure.

No suit to lie against the Sheriff for any such illegal arrest, &c.

2. No suit or proceeding shall be maintained in any Court on the ground that any such arrest, detention or imprisonment, as referred to in the preceding Section, and thereby made valid and effectual, was illegal or invalid by reason of its not having been in accordance with the Code of Civil Procedure or of the omission of the Sheriff or Deputy Sheriff of the said High Court to conform to any of the provisions of the said Code.

Extension of the Act to the High Courts of Madras and Bombay.

3. The Governor in Council of Fort Saint George, and the Governor in Council of Bombay, may by an order to be published in the Official Gazettes of Madras and Bombay respectively, extend this Act so as to apply to arrests, imprisonments and detentions under process issued by the High Court of Judicature at Madras, and the High Court of Judicature at Bombay, respectively, on or before the first day of March 1865. When so extended this Act shall in all respects apply to each of the said High Courts in the same manner as if the names of such Courts had appeared in this Act wherever the name of the High Court of Judicature at Fort William in Bengal appears.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 7th March 1865, and is hereby promulgated for general information :—

ACT No. IX OF 1865.

An Act to amend Act No. XVI of 1864 (to provide for the Registration of Assurances.)

Preamble.

Whereas it is expedient to amend Act No. XVI of 1864 (*to provide for the Registration of Assurances*); It is enacted as follows :—

Addition to tenth Section of Act XVI of 1864.

1. The second sentence of the tenth Section of Act No. XVI of 1864 shall be read as if the words "or any other person whom the Registrar General may think proper to appoint" were inserted after the words "Civil jurisdiction of the District."

Addition to thirteenth Section of said Act.

2. The thirteenth Section of the said Act shall be read as if the following proviso formed part thereof: Provided also that the provisions of this Section shall not apply to any instrument relating to shares in a Joint Stock Company notwithstanding that the assets of such Company shall consist in whole or in part of immoveable property.

Act XVI of 1864, Section 25 repealed.

3. The twenty-fifth Section of Act No. XVI of 1864 is hereby repealed.

Registration of instruments affecting immoveable property situate in more than one District.

4. Every instrument affecting immoveable property situate in more Districts than one may be presented for registration to the District Registrar of any District in which any part of the property is situate, and it shall be the duty of such Registrar to register the instrument and to forward a copy thereof endorsed with an attestation stating the date on which it was registered and its number in his Register Book to the District Registrar of every District in which any other part of such property is situate, as well

as to the Deputy Registrars subordinate to himself within the limits of whose jurisdiction any part of the property is situate. The District Registrar on receiving the copy shall forward a copy of the same and of the endorsement on the instrument to the Deputy Registrars subordinate to him within the limits of whose jurisdiction any part of the property is situate. Every District Registrar and Deputy Registrar receiving such copy as above shall register the same in the same manner as if the instrument had been presented to him in the first instance for registration.

Recognition of powers of attorney executed by persons absent from India without exact observance of provisions of Section 28 of Act XVI of 1864.

5. Every power of attorney not duly executed or attested in compliance with the terms of the twenty-eighth Section of Act XVI of 1864 shall, at any time within three months after the passing of this Act (but not afterwards), be deemed to be a power duly executed and attested within the meaning of the same Section, if the Registrar General, or in his absence the Deputy Registrar General, after making such enquiry as he shall think fit, shall have certified upon such power of attorney that he is satisfied with the execution thereof, and that, in his opinion, it should be taken as a power duly executed and attested as aforesaid: Provided that this Section shall not apply to any case in which the person who executed the power of attorney shall be still in India.

Act XVI of 1864, Sec. 40, repealed.

6. The fortieth Section of Act No. XVI of 1864 is hereby repealed.

Abstracts of instruments affecting immoveable property registered by Deputy Registrars to be forwarded through District Registrars to General Register Office.

7. An abstract of every original instrument affecting immoveable property registered in the Office of any Deputy Registrar shall, with an endorsement shewing the date on which it was registered and its number in the Register Book of such Deputy Registrar, be forwarded in duplicate within seven days from such date, to the District Registrar, who shall forthwith forward one of such duplicates to the General Register Office, and shall retain the other in his own Office, and enter it in a Book corresponding with the Book No. 1, 2, 3, or 4 as described in the fifty-sixth Section of the said Act XVI of 1864.

Appointment of Deputy Registrar General to perform duties of Registrar General under Sections 26 and 27 of Act XVI of 1864 during his absence on duty.

8. During the absence on duty of the Registrar General from the place where the General Register Office is established, it shall be lawful for him to appoint the District Registrar of such place, or, with the sanction of the local Government such other person as he shall think fit, to perform the duties of the Registrar General under the twenty-sixth and twenty-seventh Sections of the said Act. A District Registrar so appointed as aforesaid shall perform such duties in addition to his own duties as District Registrar. During such absence as aforesaid, such District Registrar or other person so appointed as aforesaid shall be styled the Deputy Registrar General, and may, in registering any instrument under the said twenty-sixth Section, use the Seal of the Registrar General.

This Act to be construed with Act XVI of 1864.

9. This Act shall be read and taken as part of the said Act No. XVI of 1864.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept., (Legislative.)

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 24th February 1865 and was referred to a Select Committee, with instructions to make their report in five weeks:—

No. 7 OF 1865.

A Bill to define and amend the Law relating to Intestate Succession among the Parsees.

Preamble.

WHEREAS it is expedient to define and amend the Law relating to Intestate Succession among the Parsees: It is enacted as follows:—

Division of property among widow and children of Intestate.

1. Where the Intestate has left a widow; if he has also left any children, the property shall be divided among the widow and children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter.

Division of property among widower and children of Intestate.

2. Where the Intestate has left a widower, if she has also left any children, the property shall be divided among the widower and children, so that his share shall be double the share of each of the children.

Division of property amongst the children of male Intestate who leaves no widow.

3. If the Intestate has left children, but no widow, the property shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter.

Division of property amongst the children of female Intestate who leaves no widower.

4. When a female Intestate has left children, but no widower, the property shall be divided amongst the children in equal shares.

Division of pre-deceased child's share of Intestate's property among the widow or widower and issue of such child.

5. If any child of the Intestate shall have died in his or her life-time, the widow or widower and issue of such child shall take the share which such child would have taken if living at the Intestate's death in such manner as if such deceased child had died immediately after the Intestate's death, but so that the issue of a deceased child or grandchild shall take only the share which such child or grandchild would have taken if living. Provided that the issue of a grandchild living at the Intestate's death shall not, nor shall such widow or widower, if he or she shall have re-married during the Intestate's life time, be entitled to take under the provisions of this Section.

Division of property when the Intestate leaves a widow or widower, but no lineal descendants.

6. If the Intestate die leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property, and the Intestate's widow or widower shall take the other moiety. Where both the father and the mother of the Intestate survive him or her, the father's share shall be double the share of the mother. Where neither the father nor the mother of the Intestate survives him or her, the Intestate's relatives on the father's side, in the order specified in the first Schedule hereto annexed, shall take the moiety which the father and the mother would have taken if they had survived the Intestate. The next of kin standing first in the same Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female, standing in the same degree of propinquity. If there be no relatives on the father's side, the Intestate's widow or widower shall take the whole.

Division of property when the Intestate leaves neither widow or widower nor lineal descendants.

7. If the Intestate die leaving neither lineal descendants nor a widow or widower, his or her next of kin, in the order set forth in the second Schedule hereto annexed, shall be entitled to succeed to the whole of his or her property. The next of kin standing first in the same Schedule shall always be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

THE FIRST SCHEDULE.

(1.) Brothers and sisters, and the children or lineal descendants of such of them as shall have predeceased the Intestate.

(2.) Grandfather and grandmother.

(3.) Grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the Intestate.

(4.) Great-grandfather and great-grandmother.

(5.) Great-Grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the Intestate.

THE SECOND SCHEDULE.

(1.) Father and mother.

(2.) Brothers and sisters and the lineal descendants of such of them as shall have predeceased the Intestate.

(3.) Paternal grandfather and paternal grandmother.

(4.) Children of the paternal grandfather, and the lineal descendants of such of them as shall have predeceased the Intestate.

(5.) Paternal grandfather's father and mother.

(6.) Paternal grandfather's father's children, and the lineal descendants of such of them as shall have predeceased the Intestate.

(7.) Brothers and sisters by the mother's side, and the lineal descendants of such of them as shall have predeceased the Intestate.

(8.) Maternal grandfather and maternal grandmother.

(9.) Children of the maternal grandfather, and the lineal descendants of such of them as shall have predeceased the Intestate.

(10.) Son's widow, if she have not remarried at or before the death of the Intestate.

(11.) Brother's widow, if she have not remarried at or before the death of the Intestate.

(12.) Paternal grandfather's son's widow, if she have not re-married at or before the death of the Intestate.

(13.) Maternal grandfather's son's widow, if she have not re-married at or before the death of the Intestate.

(14.) Widowers of the intestate's deceased daughters, if they have not re-married at or before the death of the Intestate.

(15.) Maternal grandfather's father and mother.

(16.) Children of the maternal grand-father's father, and the lineal descendants of such of them as shall have predeceased the Intestate.

(17.) Paternal grandmother's father and mother.

(18.) Children of the paternal grandmother's father, and the lineal descendants of such of them as shall have predeceased the Intestate.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to relieve the Parsees from the operation of the English Law, which prescribes the share which females shall take in succession to intestate property. It will provide what shall be the proportion of the shares of females in such inheritances among Parsees, and also, in the event of there being no lineal descendants of a person deceased, the order in which his relatives shall succeed to his property.

The Bill has, in substance, been prepared by the Parsees themselves.

CALCUTTA, *The 20th February* 1865. } H. L. ANDERSON.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Department, (Legislative.)

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 17th February 1865, and was referred to a Select Committee, with instructions to make their report thereon in two weeks :—

No. 26 of 1864.

A Bill to amend the Law relating to the custody of prisoners within the local limits of the original jurisdiction of Her Majesty's High Court of Judicature at Fort William in Bengal.

Preamble.

Whereas it is expedient that, within the local limits of the original jurisdiction of Her Majesty's High Court of Judicature at Fort William in Bengal, persons should, for the purpose of being received and detained in prison, be committed to the custody of Officers appointed by the Government of Bengal, instead of to the custody of the Sheriff of Calcutta ; it is enacted as follows :—

1. In this Act :—

"High Court." "High Court" denotes Her Majesty's High Court of Judicature at Fort William in Bengal.

"Justice of the Peace." "Justice of the Peace" includes any person duly appointed under the Statute 33 Geo. III, cap. 52, Section 151, to act as a Justice of the Peace within the Provinces of Bengal, Behar, and Orissa, and also any person duly appointed under the Statute 2 and 3 William IV, cap. 117, Section 1, to act as a Justice of the Peace within the town of Calcutta.

"Magistrate." "Magistrate" denotes a Magistrate of Police appointed under Act XIII of 1856.

"Superintendent of the Presidency Jail." "Superintendent of the Presidency Jail" denotes any Officer appointed under this Act to receive and keep prisoners.

Enactments repealed.

2. Sections 47, 48, 49, 50, 51 and 52 of Act XVIII of 1862 (*to repeal Act XVI of* 1852 *in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof, with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature*), and Act XXV of 1863 (*to empower Judges of the High Court and other authorities at Fort William in Bengal, to direct convicts to be imprisoned either in the House of Correction or the Great Jail of Calcutta, and to authorize the transfer of prisoners in certain cases from the House of Correction to the Great Jail and from the Great Jail to the House of Correction*), are hereby repealed.

After commencement of Act no one to be committed to Sheriff.

And High Court not to issue writs to Sheriff.

3. After the commencement of this Act, no person shall be committed to the Sheriff of Calcutta to be received and detained in prison ; and the Judges, of the High Court in the exercise of their original Criminal jurisdiction shall not award and issue writs to the Sheriff of Calcutta commanding him to arrest and seize the bodies of offenders, and bring them to such place and them to keep until they shall be delivered by due course of law.

Government of Bengal may appoint Superintendent of Presidency Jail.

4. It shall be lawful for the Government of Bengal to appoint an Officer who shall, under the name of Superintendent of the Presidency Jail, have authority to receive and keep prisoners committed to his custody under the provisions of this Act.

Persons sentenced by High Court to imprisonment or death to be delivered to the Superintendent of the Presidency Jail.

5. Whenever any person shall be sentenced by the High Court in the exercise of its original Criminal jurisdiction to imprisonment, simple or rigorous, or to death, such person shall be delivered to the Superintendent of the Presidency Jail together with the warrant of the said Court, and such warrant shall be executed by such Officer, and returned by him to the High Court when executed.

Persons sentenced by High Court to transportation or penal servitude to be delivered for intermediate custody to Superintendent.

6. Whenever any person shall be sentenced by the High Court in the exercise of its original Criminal jurisdiction to transportation or penal servitude, such person shall be delivered for intermediate custody to the Superintendent of the Presidency Jail ; and from such delivery the imprisonment of such person shall have effect in accordance with the provisions of Act XXXV of 1860 *(relating to the transportation of convicts)*.

Persons sentenced by Magistrate to imprisonment or imprisoned for non-payment of fine to be delivered to Superintendent with a warrant.

7. Whenever any person shall be sentenced by a Magistrate of Police for the Town of Calcutta to imprisonment with or without hard labour, and whenever any person shall be imprisoned for default of payment of any fine imposed by any such Magistrate, such person shall be delivered to the Superintendent of the Presidency Jail, together with a warrant of the Court.

Superintendent to detain such persons according to exigency of warrant, and to return same when executed.

8. The Superintendent of the Presidency Jail shall detain the person so delivered to him according to the exigency of such warrant, and shall return such warrant when executed to the Court whence it issued.

Persons committed by Justice for trial by High Court to be delivered to Superintendent with warrant.

9. Persons committed by a Justice of the Peace for trial by the High Court in the exercise of its original Criminal jurisdiction, shall be delivered to the Superintendent of the Presidency Jail, together with a warrant of commitment, directing him to have the bodies of such persons before the Court for trial at the Sessions of the Court next ensuing after the date of such commitment.

Persons arrested in pursuance of warrant of High Court or Small Cause Court to be delivered to Superintendent.

10. Every person arrested in pursuance of a warrant of the High Court in the exercise of its original Civil jurisdiction, or in pursuance of a warrant of any Court established in Calcutta under Act IX of 1850 *(for the more easy recovery of small debts and demands in Calcutta, Madras and Bombay)*, shall be delivered by the proper Officer of the Court executing such warrant, together with a copy of such warrant, to the Superintendent of

the Presidency Jail; and the Officer executing such warrant shall thenceforward be absolved from responsibility for the custody of the person so delivered.

Superintendent to detain such persons according to exigency of warrant.

11 The Superintendent of the Presidency Jail shall detain the person delivered to him by the Officer of the Court in manner aforesaid, according to the exigency of the warrant, and return the same to the said Officer of the Court as soon as the terms of the said warrant shall have been complied with.

Persons confined in House of Correction or Great Jail of Calcutta shall be deemed to be in custody of Superintendent.

12. From and after the passing of this Act, all persons confined in the House of Correction, or the Great Jail of Calcutta, whether under the sentence of Her Majesty's Supreme Court of Judicature at Fort William in Bengal, or of the High Court, or of any Police Magistrate, shall be considered to be and shall remain in the custody of the Superintendent of the Presidency Jail according to the terms of the warrants under which they have been respectively committed to custody.

Warrant under Regulation III, 1818, Bengal Code, may be directed to Superintendent.

13. Any warrant of commitment under Regulation III, 1818, of the Bengal Code, may be directed to the Superintendent of the Presidency Jail in the same manner as the same might have been directed to the Sheriff under Act XXXIV of 1850 *(for the better custody of State Prisoners)* and Act III of 1858 *(to amend the Law relating to the arrest and detention of State Prisoners)*.

Provisions of Statute 11 Vic. cap. 21, as to prisoners, to extend to persons in custody of Superintendent.

14. The provisions contained in the Statute 11 Vic., cap. 21 *(An Act to consolidate and amend the laws relating to Insolvent Debtors in India)*, relating to persons in prison or liable to be arrested or detained in or remanded or recommitted to, or entitled to be discharged from prison within the limits of the town of Calcutta, shall apply to all persons in the custody of the Superintendent of the Presidency Jail, or liable to be delivered to or entitled to be discharged from his custody.

Commencement of Act.

15. This Act shall come into operation on the day of 1865.

Act may be extended to Madras and Bombay.

16. The provisions of this Act may be extended to the local jurisdictions of Her Majesty's High Courts of Judicature at Madras and Bombay respectively by notification in the *Gazette of India*: such provisions when so extended shall, *mutatis mutandis*, relate to the custody of prisoners in such jurisdictions; and so much of the Regulations or Acts for the time being in force in such jurisdictions respectively as is in any way inconsistent with or repugnant to any of the provisions of this Act shall thenceforward cease to have effect in such jurisdictions.

STATEMENT OF OBJECTS AND REASONS.

The primary object of the present Bill is to remove the Great Jail of Calcutta from the control of the Sheriff, and to transfer it to that of the Government of Bengal.

The Sheriff of Calcutta, who has at present the exclusive control of the whole Jail, except the House of Correction, is not responsible to Government for the proper discharge of his duties. Much inconvenience has hence resulted. The Commissioner of Police, who manages the House of Correction, does not reside within the limits of the Jail, and cannot therefore give it the requisite personal attention. It is moreover desireable to provide that the Jail should be inspected more scientifically and regularly than can be done by the Visiting Justices, on whom that duty now devolves. The present Bill proposes to supply these defects by relieving the Sheriff and the Commissioner of Police from all concern with the Jail, and by placing the Officer in charge of it, as in the case of Jails in the Mofussil, under the authority of the Inspector-General and through him of the Government of Bengal.

Power is given to the Governors in Council of Madras and Bombay respectively, to deal in like manner with the Jails of Madras and Bombay.

CECIL BEADON.

The 4th February 1865.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

The following Report of the Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 10th March 1865 :—

REPORT.

We the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to whom the Bill to regulate the admission, removal, and remuneration of Advocates and Attorneys in the Civil and Criminal Courts and Revenue Offices of the North-Western Provinces of the Presidency of Bengal was referred, have the honour to report that we have considered the Bill.

In consequence of the communication referred to on the introduction of the Bill, we have extended its operation to the Lower Provinces of Bengal. We have also provided for the extension of the Bill to the Territories subject to any Local Government other than the Governments of Bengal and the North-Western Provinces. The Bill may thus become applicable to the whole of British India, and we have therefore thought it desirable to make its provisions more comprehensive and definite than was deemed necessary when, as originally intended, it applied only to the North-Western Provinces.

For the words "Advocates" and "Attorneys" we have substituted "Pleaders" and "Mookhtars," as being more familiar terms and less likely to lead to confusion. We have provided that the High Court (which is defined to mean the highest Civil Court of Appeal in any place in which the Act shall operate), shall make rules not only for the qualification and removal of persons as Pleaders

and Mookhtars, but also for their examination; and we propose that the Local Government shall appoint the examiners. These rules are to be submitted to the Local Government for approval. We have further provided for the enrolment of Pleaders and Mookhtars on the Books of the High Court, and for the issue and renewal of annual certificates, stamped with a stamp varying in amount with the Courts in which the holders shall practise. In this, as in other respects, we have, to some extent, followed the provisions, though not the words, of the English Statute 6 and 7 Vic., cap. 73.

Uncertificated persons (other than Advocates and Attorneys-at-law enrolled in the High Court) practising as Pleaders or Mookhtars are to be liable to fine and imprisonment, and to be incapable of recovering fees.

The High Court is empowered to suspend or dismiss all Pleaders or Mookhtars on its Roll who shall be convicted of a criminal offence. It may also suspend or dismiss any Pleader or Mookhtar guilty of unprofessional conduct; and we have provided a procedure when a charge of such conduct is brought in a subordinate Court. On suspension or dismissal, the Pleader or Mookhtar will have to surrender his certificate.

We have struck out Sections 12 to 15, and have in lieu thereof given power to the High Court to prepare tables of fees chargeable to a party on account of the fees of his adversary's Pleader.

The provisions as to Mookhtars practising in the Revenue Courts (whom we propose to call Revenue Agents) have been made to correspond closely with those applicable to Pleaders and Mookhtars practising in the Civil Courts.

We have fixed the 1st January 1866 for the coming into operation of the Act.

We propose that the Bill as amended, together with this Report, be published for three weeks in the *Gazette of India*.

H. B. Harington.
Cecil Beadon.
H. S. Maine.
W. Muir.
R. N. Cust.

The 7th March 1865.

AMENDED BILLS.

No. 15 of 1864.

A Bill to amend the law relating to Pleaders and Mookhtars.

Preamble. Whereas it is expedient to amend the law relating to Pleaders, Mookhtars, and Revenue Agents; It it enacted as follows:—

Preliminary.

Short title. **1.** This Act may be cited as "The Pleaders and Mookhtars' Act, 1865."

Interpretation of terms. **2.** In this Act, unless there be something repugnant or inconsistent in the subject or context —

Number. Words importing the singular number include the plural, and words importing the plural number include the singular.

"Section." "Section" means a Section of this Act.

"Person." "Person" includes any Company or Association or body of persons, whether incorporated or not.

"Pleader." "Pleader" includes Vakeels.

"Collector." "Collector" includes Officers performing any of the duties of a Collector of land revenue.

"Magistrate." "Magistrate" includes Officers exercising any of the powers of a Magistrate.

"Judge." "Judge" means the presiding judicial Officer in every Civil and Sessions Court by whatever title he is designated.

"Court." "Court" means all Courts subordinate to the High Court, including Courts of Small Causes.

"District." "District" means the local jurisdiction of the principal Civil Court of original jurisdiction; and

"District Court." "District Court" means such Court, and includes Sessions Courts, and, for the purposes of this Act, the Courts of a Commissioner and Deputy Commissioner, or any other Court in the Territories known as Non-Regulation Provinces, exercising like powers as those of a Commissioner and Deputy Commissioner or of a Civil and Sessions Judge.

"Local Government." And in any part of British India in which this Act operates, "Local Government" denotes the person authorized to administer the executive Government in such part:

"High Court." "High Court" denotes the highest Civil Court of Appeal, and

"Board of Revenue." "Board of Revenue" denotes the chief revenue authority therein.

Laws repealed. **3.** So far as they affect the Territories to which this Act extends, the enactments set forth in the first Schedule hereto are repealed, except so far as they repeal any other enactment, and except as to the recovery and application of any penalty for any offence which shall have been committed before the commencement of this Act.

Of Pleaders and Mookhtars.

High Court to make rules for qualification, &c., of Pleaders and Mookhtars. **4.** The High Court is hereby authorized and required, within six months after this Act shall take effect in the Territories in which such Court exercises jurisdiction, to make rules for the qualification, admission, and enrolment of proper persons to be Pleaders and Mookhtars of the Courts in such Territories, for the fees to be paid for the examination, admission, and enrolment of such persons, and, subject to the provisions hereinafter contained, for the suspension and dismissal of the Pleaders and Mookhtars so admitted and enrolled. The High Court may also, from time to time, vary and add to such rules.

No person to practise as a Pleader or as a Mookhtar unless previously qualified or admitted and enrolled under this Act. **5.** No person shall appear, plead, or act as a Pleader, or appear or act as a Mookhtar in any Court in the Territories to which this Act extends, unless he shall have been admitted and enrolled and shall be otherwise duly qualified to practise as a Pleader or as a Mookhtar, as the

case may be, pursuant to the provisions of this Act, and unless he shall continue to be so qualified and enrolled at the time of his practising as a Pleader or Mookhtar as aforesaid: Provided that every person who at the time at which this Act shall come into operation in any part of British India shall be, or shall be qualified to act as, a Pleader in any Court in such part, by virtue of any law, rule, or order in force therein, shall be entitled to be admitted and enrolled as a Pleader in the High Court pursuant to the provisions of this Act, without passing any examination, but subject to the conditions of any certificate or diploma held by him as to the class of Courts in which such certificate or diploma authorizes him to practise.

Local Government to appoint Examiners.

6. To facilitate the ascertainment of the qualifications mentioned in the fourth Section, the Local Government shall from time to time appoint persons to be Examiners for the purposes aforesaid, and make regulations for conducting such examinations.

Names of Pleaders and Mookhtars to be enrolled.

7. The High Court shall cause the name of every person who shall be admitted a Pleader or a Mookhtar, pursuant to the provisions of this Act, to be enrolled in books to be provided and kept for that purpose in such Court. The Courts shall take judicial notice whether a Pleader or Mookhtar is enrolled or not.

Certificates to be issued to Pleaders and Mookhtars.

8. The High Court shall cause certificates, signed by such Officer as the Court shall appoint, to be issued to persons who have been admitted and enrolled under the provisions of this Act as Pleaders or Mookhtars and are entitled to practise as such. Any such certificate when renewed, as provided in the ninth Section, may be issued and signed by the Officer so appointed, or by the Judge of the District Court within the limits of whose jurisdiction the holder of the certificate shall then ordinarily practise. Every Judge so renewing a certificate shall notify such renewal to the High Court.

Form and duration of certificate.

9. Every certificate, whether original or renewed, shall be engrossed upon stamp paper to be supplied by the person entitled to the certificate, and shall be in the form contained in the second Schedule to this Act, and shall authorize the holder to practise for the period of one year from the date of the certificate. At the expiration of such time the holder of the certificate, if desirous to continue to practise, shall renew his certificate, and on every such renewal the certificate then in the holder's possession shall be cancelled and retained by the Officer or Judge signing the renewed certificate.

Value of stamp on certificate.

10. The stamp on the certificate, whether original or renewed, shall be of the following value:—

On a certificate authorizing the holder to practise as a Pleader—

(*a.*) In the High Court and any subordinate Court—Rs. fifty:

(*b.*) In the District Courts, subordinate Courts, and Small Cause Courts—Rs. twenty-five:

(*c.*) In the Sudder Ameens' and Moonsiffs' Courts in Regulation Provinces, and in the Courts of Assistant Commissioners, Extra Assistant Commissioners and Tahsildars in Non-Regulation Provinces—Rs. fifteen:

(*d.*) In the Moonsiffs' Courts or any Court of first instance not hereinbefore mentioned—Rs. five.

On a certificate authorizing the holder to practise as a Mookhtar—

(*a.*) In the High Court and any subordinate Court—Rs. twenty-five:

(*b.*) In the District Courts, subordinate Courts, and Small Cause Courts—Rs. sixteen:

(*c.*) In the Sudder Ameens' and Moonsiffs' Courts in Regulation Provinces, and the Courts of Assistant Commissioners, Extra Assistant Commissioners and Tahsildars in Non-Regulation Provinces—Rs. eight:

(*d.*) In the Moonsiffs' Courts or any Court of first instance not hereinbefore mentioned—Rs. four.

Pleaders may practise in Criminal Courts and Revenue Offices.

11. Pleaders duly admitted and enrolled may appear, plead, and act in any Criminal Court, or before any Board of Revenue, or in any Revenue Office within the limits of the general jurisdiction of the High Court in which they are enrolled. Mookhtars duly admitted and enrolled may appear and act in any Civil Court, and may appear, plead, and act in any Criminal Court within the same limits.

Mookhtars may plead in Criminal Courts.

Persons admitted in one Court admissible to practise in other Courts of same or subordinate jurisdiction.

12. Every person who shall have been admitted to practise as a Pleader or Mookhtar under the provisions hereinbefore contained may, subject to the conditions of his certificate as to the class of Courts in which he is authorized to practise, apply to be enrolled in the Court in which he shall desire ordinarily to practise; and on such application he shall be enrolled in a book to be kept for that purpose in such Court. Any such Pleader or Mookhtar shall also be entitled, with the permission of the presiding Judge or Officer, on production of his certificate and subject to its conditions, to practise as a Pleader or Mookhtar in all other Courts or Revenue Offices within the limits of the general jurisdiction of the High Court in which he is enrolled.

Uncertificated persons practising as Pleader or Mookhtars to be liable to fine or imprisonment and to be incapable of recovering fees.

13. Any person who shall practise as a Pleader or Mookhtar in any Civil or Criminal Court or Revenue Office in the Territories to which this Act extends without having previously obtained a properly stamped certificate authorizing him so to practise, which certificate shall be then in force, shall be liable by order of such Court or the Officer at the head of such Office to a fine not exceeding ten times the amount of the stamp required by this Act to be impressed on the certificate which he should then have held, and, in default of payment, to imprisonment in the Civil Jail for a period not exceeding six calendar months. He shall also be incapable of maintaining any suit for any fee or reward for or in respect of anything done or any disbursement made by him as such Pleader or Mookhtar whilst he shall have been without such certificate.

14. The High Court may suspend or dismiss any Pleader or Mookhtar enrolled in such Court, who shall be convicted of any criminal offence.

High Court may suspend or dismiss Pleader or Mookhtar convicted of a criminal offence.

15. The High Court may also, after such enquiry as it may deem proper, suspend or dismiss any Pleader or Mookhtar who shall be guilty of fraudulent or grossly improper conduct in the discharge of his professional duty.

High Court may suspend or dismiss any Pleader or Mookhtar practising therein and guilty of unprofessional conduct.

16. If any Pleader or Mookhtar practising in any Court subordinate to the High Court, shall be charged in such subordinate Court with any such conduct as aforesaid, the Judge or Magistrate of the Court, as the case may be, shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration. Such copy and notice shall be served upon the Pleader or Mookhtar at least twenty days before the day so appointed; and on such day, or on any subsequent day to which the enquiry may be adjourned, the Court shall receive all evidence properly tendered by or on behalf of the party bringing the charge or by the Pleader or Mookhtar, and shall proceed to adjudicate on the charge. If the Judge or Magistrate shall find the charge established and consider that the Pleader or Mookhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court, and the High Court shall proceed to acquit, suspend or dismiss the Pleader or Mookhtar. Such report when made by any other than the District Judge shall be submitted to the High Court through the District Judge, who shall accompany the report with any remarks that he may think necessary and an expression of his own opinion on the case. Such report when made by a Magistrate subordinate to the Magistrate of the District shall be submitted through the Magistrate of the District to the District Judge, and shall be accompanied by the remarks and opinion of the Magistrate of the District. The Judge or Magistrate may, pending the investigation and the orders of the High Court, suspend the Pleader or Mookhtar from practising as such in his Court.

Procedure when charge of unprofessional conduct is brought in a subordinate Court.

Suspension pending investigation.

17. The High Court, in any case in which a Pleader or Mookhtar shall have been acquitted under the last preceding Section otherwise than by an order of the High Court, may call for the record and pass such order thereon as shall seem fit.

High Court may call for the record in case of acquittal under Sec. 16.

18. When any Pleader or Mookhtar shall be suspended or dismissed under any of the foregoing Sections, he shall forthwith deliver up his certificate to the Court in which he was practising at the time he was so suspended or dismissed. If he fail to make such delivery, he shall be liable, by order of such Court, to a fine not exceeding two hundred Rupees, and, in default of payment, to imprisonment in the Civil Jail for a term not exceeding three calendar months. If during such suspension, or after such dismissal, he shall practise as a Pleader or Mookhtar in any Court to which this Act extends, he shall be liable, by order of such Court, to a fine not exceeding five hundred Rupees, and, in default of payment, to imprisonment in the Civil Jail for a term not exceeding six calendar months.

Dismissed Pleader or Mookhtar to surrender his certificate.

Of Agents practising in the Revenue Offices.

19. No person other than a Pleader duly qualified under the provisions hereinbefore contained, or other than persons authorized by such general or special powers of attorney as are hereinafter mentioned, shall practise as an Agent in any proceeding before the Board of Revenue or in any Office subordinate to such Board, unless he shall have obtaind a certificate from such Board in the manner hereinafter provided. Any such certificate, when renewed as provided in the twenty-first Section, may be issued and signed by the Secretary of the Board or by any other Officer authorized by the Board in that behalf, or by the Collector of the District within the limits of whose jurisdiction the holder of the certificate shall practise at the time of renewal.

No person to act as Agent in Revenue Offices or Magistrates' Courts, unless qualified as hereinafter provided.

20. The Board of Revenue shall cause the name of every person (hereinafter called a Revenue Agent) who shall have obtained such certificate to be enrolled in a book to be provided and kept for that purpose by the Secretary of the Board or other Officer authorized by the Board in that behalf.

Names of Revenue Agents to be enrolled.

21. Every such certificate, whether original or renewed, shall be engrossed upon stamp paper to be supplied by the person entitled to the certificate, and shall be in the form contained in the third Schedule to this Act, and shall authorize the holder to practise for the period of one year from the date of the certificate. At the expiration of such time, the holder of the certificate, if desirous to continue to practise, shall renew his certificate, and on every such renewal the certificate then in his possession shall be cancelled and retained by the Officer or Collector signing the renewed certificate. Every Collector so renewing a certificate shall notify such renewal to the Board of Revenue.

Form of Certificate.

22. The stamp on such certificate, whether original or renewed, shall be of the value of five Rupees.

Value of stamp.

23. The Board of Revenue shall, before they shall grant any such certificate, satisfy themselves of the qualifications and fitness of the person applying for the same; and they are hereby authorized and required within six months after the commencement of this Act in the part of British India in which such Board is situate, to prepare rules for the purpose of defining what qualifications shall be required for such certificate.

Revenue Board to ascertain qualifications of Revenue Agents.

24. To facilitate the ascertainment of the qualifications mentioned in the last preceding Section, the Local Government shall from time to time appoint persons to be examiners for the purposes aforesaid and make regulations for conducting the examinations.

Local Government to appoint examiners.

25. Every person who shall have been admitted to practise as a Revenue Agent under this Act, may apply to be enrolled in the Office in which he shall desire ordinarily to practise, and on such application he shall be enrolled in a book to be kept for that purpose in such Office. Any such Revenue Agent shall also be entitled, with the permission of the Officer at the head of the Office, on production of the certificate held by him, to practise as a Revenue Agent in all other Revenue Offices within the limits of the Territory of the Board of Revenue in which he is enrolled.

Enrolment of Revenue Agent in Office in which he shall usually practise.

26. The Board of Revenue may suspend or dismiss any Revenue Agent practising in any Revenue Office who shall be convicted of any criminal offence.

Board of Revenue may suspend or dismiss Revenue Agent convicted of criminal offence.

27. The Board of Revenue may also, after making such enquiry as it may think proper, suspend or dismiss any Revenue Agent practising before such Board, who may be guilty of fraudulent or grossly improper conduct in the discharge of his professional duty.

Board may suspend or dismiss Revenue Agent practising before it and guilty of unprofessional conduct.

28. If any Pleader shall, while practising before such Board, be charged with fraudulent or grossly improper conduct in the discharge of his professional duty, the Board shall report the same to the High Court, and the High Court, after making such enquiry as it shall think fit, shall proceed to acquit, suspend or dismiss the Pleader, and shall thereupon send notice of such acquittal, suspension or dismissal to the said Board. Pending the investigation and the receipt of the notice last aforesaid, the Board may suspend the Pleader from practising before it.

Procedure when a Pleader is charged with unprofessional conduct before the Board of Revenue.

29. If any Pleader or Revenue Agent shall be charged with any such conduct in any Office subordinate to the Board of Revenue, the Officer at the head of such Office shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration. Such copy and notice shall be served upon the person charged, at least twenty days before the day so appointed; and on such day or on any other day to which the enquiry may be adjourned, the Officer shall receive all evidence properly tendered by or on behalf of the person bringing the charge, or by the person charged, and shall proceed to adjudicate on the charge. If the Officer find the charge established, and consider that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Board of Revenue, and the Board shall, if the person charged be a Revenue Agent, proceed to acquit, suspend or dismiss him, and shall, if he be a Pleader, forward such report to the High Court, in which he is enrolled, which Court, after making any further enquiry which it shall think necessary, shall proceed to acquit, suspend or dismiss the person charged, and shall thereupon send notice of such acquittal, suspension or dismissal to the Board by whom such report was forwarded. If the Officer shall be subordinate to the Commissioner of a Division, he shall forward the report through such Commissioner, who shall accompany the same with any remarks that he may think necessary and an expression of his own opinion on the case.

Procedure when Pleader or Revenue Agent is so charged in any Office subordinate to Board of Revenue.

30. The Board of Revenue in any case in which a Revenue Agent shall have been acquitted under the last preceding Section otherwise than by an order of the High Court or Board, may call for the record and pass such order thereon as shall seem fit, subject, in the case of a Pleader, to the provisions of the twenty-eighth Section.

Power to Board to call for record.

31. Whenever a Revenue Agent who has been dismissed or suspended by order of the Board of Revenue shall also be a Mookhtar enrolled under the provisions of this Act, the Board of Revenue shall forward a report of the case to the High Court in which he shall be enrolled; and such Court, after making any further inquiry which it may think necessary, may suspend or dismiss him as such Mookhtar.

Report to High Court when dismissed Revenue Agent is also an enrolled Mookhtar.

32. The provisions of the eighteenth Section shall apply to any Pleader or Mookhtar suspended or dismissed under the twenty-eighth, twenty-ninth or thirty-first Section.

Section 18 to apply to Vakeel or Mookhtar suspended or dismissed under Sections 28, 29 or 31.

33. When a Revenue Agent shall be suspended or dismissed under any of the foregoing Sections, he shall forthwith deliver up his certificate to the Board of Revenue or the Officer at the head of the Office suspending or dismissing him. If he fail to make such delivery, he shall be liable by order of the Board or such Officer as aforesaid to a fine not exceeding two hundred Rupees, and, in default of payment to imprisonment in the Civil Jail for a term not, exceeding three calendar months.

Dismissed Revenue Agent to surrender his certificate.

34. Every person who shall practise as a Revenue Agent in any Revenue Office in the Territories to which this Act extends, without holding a certificate then in force and without being duly qualified to practise as herein provided, shall be liable by order of the Board or Officer in whose Office he shall so practise to a fine not exceeding two hundred Rupees, and, in default of payment, to imprisonment in the Civil Jail for a period which may extend to three calendar months. The person so fined as aforesaid shall be incapable of maintaining any suit for any fee or reward for or in respect of any thing done or any disbursement made by him in the course of such practising.

Penalty on unqualified person practising as Agent.

35. Nothing hereinbefore contained shall prevent any person from employing any other person, though not a Revenue Agent enrolled under the provision of this Act, to commence and prosecute all business or any particular business in which the employer may be concerned in any Revenue Office: Provided that the person so commencing and prosecuting all or any such business as aforesaid shall hold a general or special power of attorney, as the case may be, in that behalf, from the person so employing him: Provided also that no person shall act as last aforesaid unless he shall have

Persons authorized by general or special powers of attorney may be Agents.

received the general or the special sanction, as the case may be, in that behalf of the Board of Revenue or other Officer authorized by the Local Government to grant such sanction.

Sanction may be revoked or suspended.

36. Such general or special sanction, as the case may be, may at any time be revoked or suspended by the Board of Revenue or other Officer as aforesaid by whom it was granted; and any person who, having received such sanction, shall practise under the nineteenth Section during the continuance of such revocation or suspension, shall be liable to the penalties and incur the disabilities mentioned in the thirty-third Section.

Of the Remuneration of Pleaders and Revenue Agents.

High Court and Revenue Board to fix fees on Civil and Revenue proceedings.

37. The High Court shall from time to time fix and regulate the fees which shall be payable upon all proceedings in the Courts of Civil Judicature, by any party in respect of the fees of his adversary's Pleader; and the Board of Revenue shall from time to time fix and regulate the fees which shall be payable upon all proceedings in the Revenue Courts and Offices by any party in respect of the fees of his adversary's Pleader or Revenue Agent. Tables of the fees so fixed shall be published in the Official Gazette.

Section 37 not to apply to Agents appointed under Section 35.

38. The provisions of the last preceding Section shall not be applicable to Agents appointed under the thirty-fifth Section.

Clients may make private agreements with their Pleaders, Mookhtars or Revenue Agents as to remuneration.

39. Parties employing Pleaders, Mookhtars or Revenue Agents in any Court or Office to which this Act extends, shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and it shall not be necessary to specify such agreement in the power under which such Pleaders, Mookhtars, or Revenue Agents for the time being act. Such agreements shall not be enforced otherwise than by regular suits.

Miscellaneous.

Suitors may appear, &c., for co-suitors.

40. Any suitor may appear, plead, and act in any suit, appeal on other proceeding on behalf of any co-suitor. And in all Criminal Courts, any person defending a case may (with the permission of the presiding Judge or Magistrate) employ any other person, though not a Pleader or Mookhtar duly qualified under the provisions of this Act, to assist him in such defence. But no suitor nor person so appearing, pleading, acting or assisting, shall be entitled to recover any fee or reward therefor.

Prosecutors or prisoners may employ any assistant.

Fees not recoverable by such persons.

Rules to be submitted for approval of Local Government.

41. The rules mentioned in the fourth and twenty-third Sections and all variations of and additions to such rules, shall be submitted to the Local Government for approval, and, when such approval shall have been obtained, they shall be published in three consecutive numbers of the Official Gazette.

Advocates enrolled in a High Court may plead in any Court other than a High Court in which they are not enrolled.

42. Every person now or hereafter enrolled as an Advocate on the Roll of any High Court shall, notwithstanding anything hereinbefore contained, be entitled as such to practise in any Court in British India other than a High Court on whose Roll he is not enrolled, subject nevertheless to the rules in force relating to the language in which the Court is to be addressed by Pleaders.

Attorney of a High Court may plead in any Court not a High Court.

43. Every person now or hereafter enrolled as an Attorney on the Roll of any High Court shall, notwithstanding anything hereinbefore contained, be entitled as such to plead in any Court of British India other than a High Court, subject nevertheless to the rules referred to in the last preceding Section.

Sections 8 to 19 to apply to Vakeels of the High Court.

44. On and from the first day of January 1866, the provisions contained in Sections eight to nineteen both inclusive shall, *mutatis mutandis*, apply to all persons then and thereafter enrolled as Vakeels on the Roll of any High Court under the Letters Patent constituting such Court.

Pleaders in subordinate Courts may apply to District Judge for enrolment.

45. Any person who at the time that this Act shall come into operation in any part of British India shall be practising as a Pleader in any Court other than the High Court in such part, and who shall wish to be enrolled as a Pleader under this Act may apply to be so enrolled to the District Judge, who shall forward the application to the High Court, and such Court shall cause the applicant to be enrolled under the provisions of this Act, and shall authorize the said Judge to grant a certificate to the applicant as provided in the eighth, ninth, and tenth Sections.

Fines subject to revision.

46. Every order for imposing a fine, which shall be passed under this Act, shall be subject to revision by the High Court if the order shall have been passed by a Court subordinate to the High Court, or by the Board of Revenue, if the order shall have been passed by an Officer subordinate to such Board.

Commencement and extent of Act.

47. This Act shall take effect in the territories under the Governments of the Lieutenant Governors of Bengal and the North-Western Provinces, respectively, on the first day of January 1866, and may be extended by order of any other Local Government to any part of the territories subject to such Government. Every order issued under this Section shall be published in the Official Gazette.

Repeal of inconsistent enactments in Madras, Bombay, the Punjab, &c.

48. From the date on which this Act shall take effect in the territories mentioned or referred to in the last preceding Section, so much of the Regulations, Acts, or Rules for the time being in force in such Territories as is in any way inconsistent with, or repugnant to, any of the provisions of this Act, shall cease to have effect in the Territories in which it shall so take effect.

FIRST SCHEDULE.

Regulations and Acts and parts of Regulations and Acts repealed so far as they affect the territories to which this Act extends.

Number and date of Regulations.	What Code.	Title.	Extent of Repeal.
Regulation XXVII, 1814.	Bengal Code.	For reducing into one Regulation, with amendments and modifications, the several rules which have been passed regarding the office of Vakeel or Native Pleader in the Courts of Civil Judicature.	So much as has not already been repealed.
Regulation VII, 1822.	Bengal Code.	For declaring the principles according to which the settlement of the land revenue in the Ceded and Conquered Provinces, including Cuttack, Puttaspore, and its dependencies, is to be hereafter made, and the powers and duties belonging to Collectors or other officers employed in making, revising, or superintending Settlements; for continuing, with certain exceptions, the existing leases within the said Provinces, for a further term of five years; for defining, settling, and recording the rights and obligations of various classes and persons possessing an interest in the land, or in the rent or produce thereof; and for vesting the Revenue Authorities with judicial cognizance in certain cases of suits and claims relating to land, the rent, and produce of land.	Section xxv.
Regulation IX, 1825.	Bengal Code.	For extending the operation of Regulation VII, 1822; for authorizing the Revenue Authorities to let in farm estates under temporary leases, on the default of the Malguzars, or to hold the same khas for a term of years; for modifying and adding to the rules contained in Regulation II, 1819; and for making certain other amendments in the existing Regulations.	So much of Clause 9, Section v, as provides that Section xxv of Regulation VII of 1822, shall be applicable to cases investigated by Collectors under the rules of Regulation II of 1819, or under the provisions of Regulation IX of 1825.

Number and date of Acts.	Title.	Extent of Repeal.
Act I of 1846.	For amending the law regarding the appointment and remuneration of Pleaders in the Courts of the East India Company.	The whole.
Act XVIII of 1852.	To amend the law relating to Pleaders in the Lower Provinces of the Presidency of Bengal.	The whole.
Act XX of 1853.	To amend the law relating to Pleaders in the Courts of the East India Company.	The whole.
Act X of 1859.	To amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	So much of Section lxxi as directs that no fee for any Agent shall be charged as part of the costs of suit in any case under the said Act, and the whole of Section cxlix.

SECOND SCHEDULE.

Form of Pleader or Mookhtar's Certificate.

Stamp

Pursuant to "The Pleaders, Mookhtars, and Revenue Agents' Act, 1865," I hereby certify that A. B. Pleader [*or* Mookhtar], whose place [*or* places] of business is [*or* are] at hath this day delivered and left with me a declaration in writing signed by him and containing his name and place [*or* places] of business and the Court [*or* Courts] of which he is admitted a Pleader [*or* Mookhtar] together with the year in which he was so admitted; and I hereby further certify that he is duly enrolled in the High Court of Judicature at Fort William in Bengal [*or* the Sudder Court of the North-Western Provinces, *or as the case may be*] and that he is entitled to practise as a Pleader [*or* Mookhtar] in the District Courts, subordinate Courts, and Small Cause Courts [*or* the Sudder Court of the North-Western Provinces, and any subordinate Court or the Sudder Ameens' Courts, *or* the Moonsiffs' Courts *as the case may be*] and to practise as a Revenue Agent before the Board of Revenue of the Lower Provinces [*or* of the North-Western Provinces, *or as the case may be*] for the period of one year from the date hereof. Given under my hand this day of 186 .

C. D.

Registrar of the High Court of Judicature at Fort William in Bengal [*or* of the Sudder Court of the North-Western Provinces, *or as the case may be.*]

THIRD SCHEDULE.

Form of Revenue Agent's Certificate.

Stamp

Pursuant to "The Pleaders, Mookhtars, and Revenue Agents' Act, 1865," I hereby certify that A. B. of is entitled to practise as a Revenue Agent before the Board of Revenue of the North-Western Provinces [*or* of the Lower Provinces, *or as the case may be*], and in any office subordinate thereto in such Provinces, for the period of one year from the date hereof. Given under my hand this day of 186 .

C. D.

Secretary to the Board of Revenue of the North-Western Provinces [*or* the Lower Provinces, *or as the case may be.*]

HOME DEPARTMENT.

No. 2176.

Fort William, the 6th March 1865.

NOTIFICATIONS.

Captain W. H. Edgcome, R. E., is appointed to officiate as Superintendent of the Pegu Topographical Survey.

No. 2211.

The Governor General in Council is pleased to re-attach to the Bengal Division of the Presidency of Fort William, Mr. J. M. Lowis, of the Civil Service, who returned from furlough on the 2nd instant.

No. 2212.

The 8th March 1865.

Mr. James Duff Ward, of the Civil Service, is permitted to proceed to Europe on furlough for a period of three years, from the date of embarkation.

No. 2213.

Under Section 12 of Act II of 1857, the Governor General in Council is pleased to authorize the affiliation of the following Institutions to the Calcutta University from the 1st January 1865 :—

Victoria College, Agra, in Arts.
The Hooghly College, in Law.
The Kishnaghur College, in Law.

No. 2214.

His Excellency the Governor General in Council is pleased, under Section 26, 24 and 25 Victoria, Cap. 67, to grant Major General the Hon'ble Sir Robert Napier, K. C. B., an ordinary Member of the Council of the Governor General of India, leave of absence on medical certificate for a period of four months.

No. 2215.

The 10th March 1865.

The Right Hon'ble the Secretary of State having appointed Mr. George Noble Taylor, of the Madras Civil Service, to be a Provisional Member of the Council of the Governor General of India, and a vacancy having occurred in the said Council by the departure, on leave, of Major General the Hon'ble Sir Robert Napier, K. C. B., to Europe, Mr. Taylor has accordingly this day taken the oaths and his seat as an ordinary Member of the Council of the Governor General of India, under the usual salute from the ramparts of Fort William.

No. 2216.

The Governor General in Council is pleased to re-attach to the North-Western Provinces, the Punjab, and Oudh, Mr. W. B. Jones, of the Civil Service, who returned from furlough on the 2nd instant.

No. 2217.

Mr. Wilton Oldham, of the Civil Service, has reported his departure from India per Steam Ship *Cashmere*, which vessel was left by the Pilot at sea on the 4th instant.

No. 2218.

Mr. Charles Currie, of the Civil Service, has reported his departure from India by the Steam Ship *Nemesis*, which vessel was left by the Pilot at sea on the 25th ultimo.

No. 2219.

The Revd. T. A. C. Firminger, of the Bengal Ecclesiastical Establishment, has been granted by the Right Hon'ble the Secretary of State an extension of leave on medical certificate for six months.

No. 2220.

Major T. H. Chamberlain, City Magistrate, Lucknow, has obtained 24 days' leave from the 11th instant, or from such date as he may avail himself of it, preparatory to applying for sick leave to Europe.

No. 2222.

The under-mentioned Officer in Oudh is invested with the powers of a Magistrate described in Section 22 of Act XXV of 1861 :—

Pundit Kalee Sahai, Extra Assistant Commissioner.

No. 2224.

The Governor General in Council is pleased to invest the under-mentioned Tehseeldar, in the Central Provinces, with the powers of a subordinate Magistrate of the IInd Class, described in Chapter II, Section 22 of Act XXV of 1861.

Shunkur Lall, Tehseeldar of Kuttungee, in the Seonee District.

No. 2226.

Dr. Æneas McLeod Ross, Assistant Surgeon, Madras Establishment, is appointed to the medical charge of Chanda, in the Central Provinces.

No. 2231.

Assistant Surgeon J. Law, of the Madras Medical Service, is appointed Civil Assistant Surgeon of Saugor.

No. 2233.

The services of First Class Native Doctor, Shaik Ruheem Buksh, attached to the Charitable Dispensary at Sumbulpore, are placed at the disposal of the Military Department for other duty.

Native Doctor Noor Mahomed, attached to the Jail Hospital at Sumbulpore, is transferred to the Charitable Dispensary at that station.

Third Class Native Doctor Buldeo, at present doing duty with the 31st Regiment Native Infantry, is appointed to the Jail Hospital at Sumbulpore.

No. 2235.

W. H. Clarke, Esq., L. L. D., Recorder of Rangoon and of Moulmein, embarked on board the Steamer *India*, en route to England, on the 15th February 1865, on the leave of absence granted to him in Notification No. 300, dated 11th January 1865.

No. 2237.

Major E. M. Rayn, Deputy Commissioner, 3rd Grade, assumed charge of the Rangoon Town Magistracy from Mr. G. Hough, on the afternoon of the 8th February 1865.

No. 2239.

Captain E. B. Sladen, Agent to the Chief Commissioner, British Burmah, at the Court of Mundalay, is appointed a Marriage Registrar under Act V of 1852, vice Dr. Williams.

No. 2240.

Captain A. R. McMahon received charge of the Magistrate's Office at Akyab on the afternoon of the 19th January 1875, and again on the afternoon of the 28th January delivered over charge of the same to Major E. J. Spilsbury.

No. 2241.

Mr. W. R. Brooke, Assistant Superintendent of Telegraphs, doing duty in the Bombay Circle, is appointed to officiate in charge of the Bengal Circle.

No. 2243.

The Governor General in Council is pleased to invest the under-mentioned Junior Civil Servants, transferred from the North-Western Provinces for service in Oudh, with the powers of a Subordinate Magistrate of the 2nd Class, described in Section 22 of Act XXV of 1861 :—

Mr. C. W. McMinn, Officiating 3rd Class Assistant Commissioner, Lucknow.

Mr. J. C. Williams, Officiating 3rd Class Assistant Commissioner, Roy Bareilly.

Mr J. Woodburn, Officiating 3rd Class Assistant Commissioner, Seetapore.

Mr. J. T. Crawford, Officiating 3rd Class Assistant Commissioner, Fyzabad.

Mr. C. Steinbelt, Officiating 3rd Class Assistant Commissioner, Durriabad.

No. 2245.

Captain W. N. Lees, L. L. D., resumed charge from Captain E. St. George of the office of Secretary to the Board of Examiners on the 8th instant.

No. 2246.

Erratum.

In Notification No. 825 of the 25th January 1865, for "*Moung Pai Hlan*" read "*Moung Pai Hlau.*"

No. 2253.

Mr. W. J. R. Carnac, of the Civil Service, is permitted to proceed to Europe on furlough for a period of one year, from the date of embarkation.

No. 2254.

Mr. F. Wright, Assistant Superintendent of Police, Hyderabad Assigned Districts, to officiate as District Superintendent of Police from the 16th of December 1864, vice Captain H. C. Menzies.

No. 2255.

Lieutenant Colonel J. T. Walker, R. E., Superintendent of the Great Trigonometrical Survey of India, resumed charge of his appointment on the morning of the 30th January 1865.

Lieutenant Colonel D. G. Robinson, R. E., Officiating Superintendent of the Great Trigonometrical Survey of India, was permitted to retain charge of the current duties of the Office in Calcutta from the 30th January till the 28th February.

E. C. BAYLEY,

Secy. to the Govt. of India.

FOREIGN DEPARTMENT.

JUDICIAL.

No. 80.

Fort William, the 8th March 1865.

The Governor General in Council is pleased to cancel so much of G. O. No. 352, dated 22nd August 1862 as refers to the extension of Act XIII of 1859 to Nimar.

No. 82.

The Governor General in Council is pleased to invest the under-mentioned Officer with the powers described in Act IX of 1860:—

Captain G. Warner, Deputy Commissioner of Nimar, in the Nimar District.

REVENUE.

No. 112.

Major H. F. Waddington, Deputy Commissioner and Settlement Officer of Mundla, in the Central Provinces, to act as Settlement Officer of Mundla only, making over charge of the Deputy Commissioner's Office to Captain J. J. Fulton, as a temporary arrangement.

Captain J. J. Fulton, Assistant Commissioner of Mundla, to officiate as Deputy Commissioner of Mundla, as a temporary arrangement.

POLITICAL.

No. 196.

The 6th March 1865.

His Excellency the Governor General in Council is pleased to permit Captain W. Bannerman to resign the appointment of Commissioner for laying down the boundary between the Central India Agency and the Rewah Kanta States, conferred upon him by Notification No. 73, dated 24th January 1865.

Captain Bannerman's services are replaced at the disposal of the Military Department.

No. 207.

The 8th March 1865.

Dr. J. P. Stratton, Political Assistant of Bundlecund, is appointed to be Political Agent of Bundlecund, with effect from the 1st June 1864.

GENERAL.

No. 515.

The 6th March 1865.

The following promotions and appointments in British Burmah are sanctioned by the Governor General in Council:—

Name.	Promoted or appointed to be	Date of appointment or promotion.
Moung Shwe Yai, new appointment	Extra Asst. Commr., 3rd grade (Myooke), on Rs. 20 per mensem.	From 10th September 1864, vice Moung Shwe Min, dismissed.
Moung Tan, ditto ...	Extra Asst. Commr., 3rd grade (Myooke), on Rs. 60 a month.	From 10th October 1864, vice Moung Pay Loo, dismissed.
Moung Htoon Oung, ditto ...	Extra Asst. Commr., 3rd grade (Myooke), on Rs. 50 per mensem.	From 15th September 1864, vice Moung Shwe Bau, pensioned.
Moung Doot, Extra Asst. Commr., 3rd grade (Myooke), on Rs. 60 per mensem.	Extra Asst. Commr., 3rd grade (Myooke), on Rs. 100 per mensem.	From 1st May 1864, vice Moung Shwe Bweng, Extra Asst. Commr., 3rd grade (Myooke), reduced to Rs. 60 per mensem.
Moung Shwe Bweng, Extra Asst. Commr., 3rd grade (Myooke), on Rs. 100 per mensem.	Extra Asst. Commr., 3rd grade (Myooke), on Rs. 60 per mensem.	From 1st May 1864, reduced in room of Moung Doot, above noticed.
Moung Kyait, Burmese writer, on Rs. 25 a month.	Extra Asst. Commr., 3rd grade (Myooke), on Rs. 60 per mensem.	From 25th July 1864, vice Moung Hlay, dismissed.
Moung Wetgalay, Extra Asst. Commr., 3rd grade (Myooke), on Rs. 55 per mensem.	Extra Asst. Commr., 3rd grade (Myooke), on Rs. 50 per mensem.	From 14th February 1864, reduced, vice Moung Tha Hai, on Rs. 50 dismissed.
Moung Tsee, new appointment ...	Extra Asst. Commr., 3rd grade (Myooke), on Rs. 55 per mensem.	From 14th February 1864, vice Moung Wet Galay, reduced.

Name.	Promoted or appointed to be.	Date of appointment or promotion.
Moung Shwe Go, Extra Asst. Commr., 3rd grade (Myooke), on Rs. 50 a month.	Extra Asst. Commr., 3rd grade (Myooke), on Rs. 74 per mensem.	From 27th December 1864, vice Moung Me Doe, pensioned, and whose appointment became absorbed.
Moung Phai, new appointment ...	To officiate as Extra Asst. Commr., 3rd grade (Myooke), on Rs. 100 per mensem.	From 24th August 1864, owing to suspension of Moung Tseing, Extra Asst. Commr., 3rd grade (Myooke).
Moung Kra Oung, ditto	To officiate as Extra Asst. Commr., 3rd grade (Myooke), on Rs. 100 per mensem.	From 1st June 1864, owing to absence on furlough of Mr. Motley, Extra Asst. Commr., 1st grade.
Moung Shwe Kyee, Extra Asst. Commr., 2nd grade (Tseekay), on Rs. 200 a month.	Extra Asst. Commr., 2nd grade (Tseekay), on Rs. 250 a month.	From 1st October 1864, vice Moung Shwe Doh, Extra Asst. Commr., 2nd grade (Tseekay), pensioned.
Moung Shwe Nyeng Akhon Woon (or Head Revenue Burmese Clerk.)	Extra Asst. Commr., 2nd grade, (Tseekay), on Rs. 200 a month.	From 1st October 1864, vice Moung Shwe Kyee.
Moung Shwe Bo, Extra Asst. Commr., 3rd grade (Myooke), on Rs. 50 a month.	Extra Asst. Commr., 2nd grade (Tseekay), on Rs. 200 a month.	From 1st November 1864, vice Moung Louk, Extra Asst. Commr., 2nd grade (Tseekay), pensioned.

No. 517.

Mr. St. George Tucker, Commissioner of the Khyrabad Division, in Oudh, has obtained privilege leave of absence for two months, from the 24th April next, or from the subsequent date on which he may avail himself of it.

No. 519.

Lieutenant Colonel R. C. Lawrence, C. B., received charge of the Nipal Residency from Captain C. C. Taylor, on the afternoon of the 18th February 1865.

No. 536.

The 8th March 1865.

Lieutenant K. J. L. Mackenzie, Assistant Commissioner, East Berar, Hyderabad Assigned Districts, has obtained permission to remain at Bangalore until the 20th February 1865.

No. 538.

Mr. A. Shakespear, Agent to the Governor General at Benares, resumed charge of his Office from Mr. G. P. Money on the 28th February 1865.

No. 540.

Mr. C. Currie, Commissioner of the Baiswarra Division, in Oudh, sailed for England on the Steamer "Nemesis," which vessel was left by the Pilot at sea on the 25th February 1865.

No. 541.

Captain R. C. Stewart, 8th Madras Light Cavalry, is appointed to officiate as Military Assistant to the Commissioner of Mysore, during the absence on leave of Major E. B. Ramsay.

Major Ramsay made over charge of his office to Captain Stewart on the 4th February 1865.

No. 542.

Major B. Reid received charge of the office of Deputy Commissioner of Darjeeling from Mr. H. Beverley on the afternoon of the 18th February 1865.

No. 543.

Mr. J. T. Crawford, C. S., is appointed to officiate as an Assistant Commissioner in Oudh, during the absence on leave of Lieutenant F. Currie, or until further orders.

A. COLVIN,
Offg. Under Secy. to Govt. of India.

FINANCIAL DEPARTMENT.

No. 1202.

Fort William, the 9th March 1865.

NOTIFICATIONS.

The Governor General in Council is pleased, under Section 1 of Act XXVIII of 1864, to extend the under-mentioned Sections of Act XXI of 1856 and Act XXIII of 1860 to certain portions of the Province of the Punjab, viz. :—

To those portions of the Province in which an acreage on Poppy Cultivation has been or may be introduced: all the provisions of Acts XXI of 1856 and XXIII of 1860, with the exception of—

Sections 34, 53, and 75 of Act XXI of 1856, so far as they relate to the supply of Opium from Government stores,

Sections 28, 35, 48, 51, and 52 of Act XXI of 1856, so far as they restrict the sale of Opium to Licensed Vendors only, and prohibit the possession of Opium by other parties,

And of Section 41 of the same Act, permitting a Licensed Vendor to surrender his license on giving 15 days' notice.

To the rest of the Province all the provisions of Acts XXI of 1856 and XXII of 1860, with the exception of—

Sections 34, 53, 75 of Act XXI of 1856, so far as they relate to the sale of Opium from Government stores,

And of Section 41 as aforesaid.

No. 1304.

Mr. J. L. Lushington received charge of the Office of Deputy Auditor and Accountant General, Bombay, from Mr. S. D. Birch, on the 28th February 1865.

No. 1347.

The 10th March 1865.

Statement of the amount of Government Currency Notes in circulation, of the amount of Coin and Bullion Reserve, and Government Securities held by the Department of Issue of Paper Currency.

Date of Returns.	Circles of Issue.	Notes in Circulation.	Silver Coin Reserve.	Silver Bullion Reserve.	Government Securities held in Calcutta.	Gold Coin Reserve.
1865.						
March 4th	Calcutta Circle ...	2,90,94,920	1,01,28,355	46,00,000	1,38,63,145	5,03,420
„ „	Allahabad Branch do.	17,73,650	10,72,897	.....	7,00,063	690
„ „	Lahore do. do.	12,96,090	7,80,065	.....	5,00,045	15,980
„ „	Nagpore do. do.	9,28,410	7,78,403	.....	1,49,927	80
Feb. 25th	Madras Circle ...	54,00,000	18,96,137	.....	35,03,863	...
„ „	Calicut Branch do.	1,18,640	1,18,640	.....	.....	...
„ „	Trichinopoly do. do.	2,36,180	2,36,180	.....	.....	...
„ „	Vizagapatam do. do.	1,13,450	1,13,450	.....	.....	...
March 4th	Bombay Circle ...	3,46,00,000	1,50,71,991	25,00,000	1,70,28,009	...
		7,35,61,340	3,01,96,118	71,00,000	3,57,45,052	5,20,170
Deduct— Notes of other Circles cashed at Head Office		40,540	40,540	.....	.....	...
	Total	7,35,20,800	3,01,55,578	71,00,000	3,57,45,052	5,20,170

DEPARTMENT OF ISSUE OF PAPER CURRENCY,
CALCUTTA,
Dated 6th March 1865.

(Signed) H. HYDE,
Head Commissioner, Department of Issue of Paper Currency.

No. 1348.

The following Statement of the Silver received and coined in the Mints of Calcutta, Madras, and Bombay, in January 1865, is published for general information :—

	Calcutta.			Madras.			Bombay.		
	Bullion or Coin received during the month, valued in Rupees.		Coined and examined during the month, valued in Rupees.	Bullion or Coin received during the month, valued in Rupees.		Coined and examined during the month, valued in Rupees.	Bullion or Coin received during the month, valued in Rupees.		Coined and examined during the month, valued in Rupees.
	Govt.	Merchts.		Govt.	Merchts.		Govt.	Merchts.	
In January 1865...	20,022	10,13,616	31,31,502	8,653	8,50,335	6,76,000	1,84,318	43,87,735	15,99,539

No. 1349.

The Governor General in Council is pleased to direct the publication of the following Despatch of the Right Hon'ble the Secretary of State for India, No. 12, dated 18th January 1865, and its enclosure, deciding that an Uncovenanted Servant appointed prior to the promulgation of the new Pension Rules on the 8th June 1863, may, if those rules render it necessary for him, in order to obtain a pension, to serve for a longer period than was required by the old rules, be allowed, in the event of ill health rendering it necessary for him to retire from the service, to complete the period of service required by the old Rules, provided that he shall not at any time have availed himself of the benefits conferred by the new Leave Rules :—

Financial. India Office,
No. 12. *London, 18th January* 1865.

To His Excellency the Right Hon'ble the Governor General of India in Council.

Sir,—I forward to you a copy of a Despatch to the Government of Madras, of this day's date, No. 1, on the subject of an appeal by an Uncovenanted Servant in that Presidency against the enforcement in his case of the new Uncovenanted Service Pension Rules.

2. You will observe that, in certain cases, where the application of the new Rules would render it necessary for an officer, in order to obtain his pension, to serve for a longer period than was required by the old Rules, Her Majesty's Government authorize the grant of a pension under the old Rules, provided that he has not at any time availed himself of the benefits conferred by the new Leave Regulations.

I have, &c.,
(Signed) C. Wood.

Financial. India Office,
No. 1. *London, 18th January* 1865.

To His Excellency the Hon'ble the Governor in Council, Fort St. George.

Sir,—I have considered in Council your Public letter dated the 31st of October 1864, No. 38, forwarding a Memorial by Mr. J. G. Ferrand, First Uncovenanted Assistant in the Military Department of the Government Secretariat, praying that the new Uncovenanted Service Pension Rules may not be enforced in his case, but that, when the time arrives for his retirement from the service, he may be allowed the benefit of the former Rules.

2. The general tendency of the new Rules, so far from causing injury to the members of the Uncovenanted Service, is, on the contrary, to improve their position. In regard to the grant of pensions to Uncovenanted servants in the enjoyment of high salaries, it had become necessary to fix a more definite limit than had previously existed ; but, with this exception, the cases will be comparatively few, in which the new Rules will not be found more favourable than the old.

3. Mr. Ferrand points out that the application of the new Rules might render it necessary for him, in order to obtain a pension, to serve for a longer period than was required by the old Rules. In the case of any Uncovenanted Servant so circumstanced, who was appointed prior to the promulgation of the new Rules, and whom you may consider entitled to favourable consideration, I shall not object to your granting a pension after he has completed the period of service required by the old Rules, in the event of his health rendering it necessary for him to retire from your service. It must, however, be understood that an Uncovenanted Servant will not be allowed to take his pension under the old Rules, if he has at any time availed himself of the benefits conferred by the new Leave Regulations.

4. In making this communication, I think it necessary to call your attention to the great inconvenience which must result from your asking the decision of the Home Government upon some point of the Pension Rules, with direct reference to an individual whose retirement from the service has not yet taken place. It is a fundamental principle of those Rules that the full amount of pension is only to be given as the reward of approved service. Until an officer retires from the service, it cannot be known what amount of pension the Government will consider him to deserve, and their determination can hardly be

unfettered, if a decision has been previously passed by the Home Government on his individual case.

I have, &c.,
(Signed) C. Wood.

No. 1867

In continuation of Notification No. 1193, dated the 3rd instant, the following Statement of Cash Balances, as reported up to this date, in the Government Treasuries in India, at the close of the month of January 1865, contrasted with that of the previous years, is published for general information :—

According to the present limits of the several Governments.	1863. January.	1864. January.	1865. January.
	Rs.	Rs.	Rs.
Government of India ...	5,89,13,000	2,59,01,873	1,39,21,037
Bengal ...	2,10,51,231	1,98,36,321	1,78,60,016
N. W. Provinces ...	3,63,37,772	3,36,26,596	2,80,85,057
Punjab ...	1,12,80,211	1,06,72,861	1,56,79,259
Bombay ...	3,70,63,021	2,08,81,572	2,11,02,889
Central Provinces ...	47,97,792	34,91,386	43,35,897
Deccan ...	20,65,198	30,39,448	27,51,925
Madras ...	2,59,27,924	2,87,07,134	2,33,25,339
Total ...	19,74,67,152	14,61,59,791	12,51,61,419

E. H. Lushington,
Secy. to the Govt. of India.

MILITARY DEPARTMENT.

Fort William, the 6th March 1865.

No. 228 *of* 1865.—The under-mentioned Officer having completed twelve years' service, four years of which were on permanent Staff employ, to be Captain from the date specified opposite to his name, under the Royal Warrant of the 16th January 1861, subject to Her Majesty's approval :—

Bengal Staff Corps.

Lieutenant G. N. Money ... 4th March 1865.

No. 229 *of* 1865.—The under-mentioned Officer of the Royal Engineers, who has been placed under orders for duty in the Bengal Presidency, reported his arrival on the date specified below :—

	Date of arrival at Fort William.
Lieutenant M. S. Bell ...	19th February 1865.

No. 230 *of* 1865.—Sub-Conductor James Hand is appointed to officiate as Conductor in the Ordnance Commissariat Department from the 25th ultimo, during the absence, on furlough to Europe, of Conductor T. Wilkins, or until further orders.

No. 231 *of* 1865.—The under-mentioned out-Pensioners of the Royal Hospital at Chelsea having been permitted to reside and draw their stipends in India, payment of pensions are to be made and charged accordingly :—

	Rate of pension per diem.
Gunner Charles French, of the 24th Brigade Royal Artillery.	9*d.* (nine pence) from the date on which he ceases to receive Regimental pay.
Gunner Thomas Bonehill, of the Royal Horse Artillery	8*d.* (eight pence) from the date on which he ceases to receive Regimental pay.

No. 232 *of* 1865.—His Excellency the Governor General in Council is pleased to make the following promotion in the Medical Department :—

Surgeon Major A. H. Cheke, Civil Surgeon of Benares, to be a Deputy Inspector General of Hospitals, with temporary rank, during the absence on sick leave of Deputy Inspector General of Hospitals R. B. Kinsey, or until further orders.

No. 233 *of* 1865.—The under-mentioned Officer is permitted to Europe on furlough on private affairs :—

Captain John Boyd Saunders, of the late 4th European Light Cavalry, Brigade Major, Allahabad.	For 3 years, under the old Regulations.

No. 234 *of* 1865.—Kote Duffadar Azeem Khan, of the 2nd Regiment Bengal Cavalry, is promoted to the rank of Jemadar from the 6th December 1864, vice Jemadar Meer Moorad Ally, invalided.

The 7th March 1865.

No. 235 *of* 1865.—With reference to the Notification from the Foreign Department, No. 507, dated 3rd instant, that part of Government General Order No. 184 of the 20th ultimo, placing the services of Assistant Surgeon G. N. Cheke, in medical charge of the Nepal Residency, at the disposal of His Excellency the Commander-in-Chief, is hereby cancelled.

No. 236 *of* 1865.—The under-mentioned Officer is permitted to proceed to Europe on leave of absence on sick certificate :—

Assistant Surgeon John Pitthall, M. D. L. R. C. P., of the Medical Department ...	For 18 months, under the new Regulations.

No. 237 *of* 1865.—His Excellency the Governor General in Council is pleased to notify that the Staff salaries laid down in Government General Order No 101 A. dated 29th October 1863, are to be held to include the following sums as Horse Allowance, which, under the Financial Resolution No. 8262 of the 2nd July 1861, is exempted from the payment of Income Tax :—

In the Native Cavalry.

In the Staff salary of the Commanding Officer ...	Rs.	90 for 3 Chargers.
Of each of the other Officers ...	,,	60 for 2 Chargers.

In the Native Infantry.

In the Staff salary of each Officer ...	Rs.	30 for 1 Charger.

2. Up to the 30th June 1864 the Staff Allowance of each Officer of Cavalry is to be held to have included the sum of Rupees 90 for three Chargers, which till that date each Officer belonging to a Native Cavalry Corps was required to maintain.

No. 238 *of* 1865.—With reference to Government General Order No. 22 of the 6th January 1865, it is notified that the Pay and Indian Allowances, extra Batta and Tentage of European Commissioned Officers, not being Officers of the Staff Corps, or holding Staff appointments, shall be considered a consolidated sum, and shall be drawn in one item as *Regimental Pay and Allowances* without specifying the details of the several components.

2. It is to be distinctly understood that this consolidated sum contains the same fixed allowance as heretofore, on account of Tentage, as follows, viz. :—

	Rs.	As.	P.
Colonel ...	200	0	0
Lieutenant Colonel ...	150	0	0
Major ...	120	0	0
Captain and Pay-master ...	75	0	0
Lieutenant and Quarter Master	50	0	0
Cornet and Ensign ...	50	0	0

Horse Allowance will continue to be drawn as a separate item.

This order is applicable to the three Presidencies

The 8th March 1865.

No. 239 *of* 1865.—In conformity with Government General Order No. 144 of 1852, the following Statement of Deposits made at the Presidency Pay Office, during the month of February 1865, on account of the Estates of deceased European Commissioned, Non-Commissioned, and Warrant Officers and Soldiers of the Indian Military Forces of Her Majesty, is published for general information; and it is hereby notified that claims to the Estates in question, which shall not be preferred to the Presidency Pay Master by Executors and Administrators, before the conclusion of twelve months after the date of decease, cannot be attended to in this country, as the money after that period will be remitted to, and made payable by the Secretary of State for India.

Statement of Deposits made at the Presidency Pay Office on account of Estates of deceased European Commissioned, Non-Commissioned, and Warrant Officers and Soldiers of Her Majesty's Indian Military Service, in the month of February 1865.

Date of Deposit.	On whose account.	Rank	Corps.	General Number	Date of decease.	Testate or Intestate.	Amount of monies accruing from the adjustment of Estates.	Amount of Donation Batta due to Estates.	Total unclaimed amount deposited.	How disposed of.				Rate of Exchange.
										Amount paid in India.	Amount retained in India.	Amount remitted for payment in England.		
												In Co.'s Rupees.	Equivalent in Sterling.	
	Commissioned and Warrant Officers.						Rs. A. P.		Rs. A. P.					
6th Feb. 1865	(*a*) Burke Cuppage ...	Captain ...	Late 3rd Bl. Eu. Cavy. ...	...	8th July 1864	Intestate	190 6 5	..	190 6 5					
6th „ „	(*b*) Hotham Taylor Woodcock	Lieutenant ..	Genl. List. Infy., Bl. Army	...	17th Nov. 1863	Ditto	157 8 0	..	157 8 0					
6th „ „	(*c*) George Welley Eaton ...	Ditto ..	73rd Native Infy. ...	..	12th Oct. 1864	Ditto	113 1 6	...	113 1 6					
8th „ „	(*d*) William Dumville Smythe...	Asst. Surgeon ...	Eu. 11th Royal Artillery	...	13th Dec. „	Not known	2,414 9 11	.	2,414 9 11					
13th „ „	(*e*) Harry Bowles ...	Lieutenant ..	Invalid Establishment ...	...	14th Sept. „	Intestate	627 8 6	...	627 8 6					
20th „ „	J. Dawson ..	Captain ..	1st Native Infy. ...		2nd Nov. 1858	Ditto	100 9 6	...	100 9 6					
20th „ „	Arthur Morgan ...	Asst. Surgeon ..	Medical Charge . .	...	10th Nov. 1861	Ditto	105 15 9	...	105 15 9					
17th „ „	(*f*) Charles Stewart, M. D. ...	Surgeon ...	34th Regt. Native Infy ..	..	6th Aug. 1864	Ditto	49 12 10	...	49 12 10					
22nd „ „	(*g*) Edgar Gresley Stone	Captain ...	5th ditto ...	..	5th Nov. „	Ditto	78 0 0	...	78 0 0					
27th „ „	(*h*) John Murphy ...	Ensign ..	Unattached List, doing duty with No. 1 Gn. By. Bl. Artillery.	...	10th Oct. ..	Testate	482 2 2	...	482 2 2					
	Carried over ...	....	.....	...	.....		4,319 10 7	...	4,319 10 7					

(*a*) Next of kin, father, Major General Burke Cuppage, Governor of Jersey.
(*b*) Next of kin, brother, Captain E. Woodcock (Bombay Staff Corps), District Superintendent of Police, Seetapore, Oudh.
(*c*) Widow, Mrs. Jeanette Eaton.
(*d*) Next of kin, father, William Smythe, Esq., of 17th Upper Loch Gardens, Brighton.
(*e*) Widow, Mrs. Mary Jane Bowles, and five children.
(*f*) Next of kin, mother.
(*g*) Next of kin, father, E. G. Stone, Esq., Chamber's Court, near Tewkesbury, Gloucestershire.
(*h*) Widow, Mrs. Lucy Domingo Murphy, and two children.

Statement of Deposits made at the Presidency Pay Office on account of Estates of deceased European Commissioned, Non-Commissioned, and Warrant Officers, &c.,—continued.

Date of Deposit.	On whose account.	Rank.	Corps.	General Number.	Date of decease.	Testate or Intestate.	Amount of monies accruing from the adjustment of Estates.	Amount of Donation Batta due to Estates.	Total unclaimed amount deposited.	How disposed of.				Rate of Exchange.
										Amount paid in India.	Amount retained in India.	Amount remitted for payment in England.		
												In Co.'s Rupees.	Equivalent in Sterling.	
							Rs. A. P.		Rs. A. P.					
	Brought forward ...	...	.....	...	...	...	4,319 10 7	...	4,319 10 7					
	Non-Commissioned Officers and Soldiers.													
6th Feb. 1865	(*a*) Thomas Goddard ...	Corporal ..	H. M.'s 20th Hussars ..	481	25th Mar. 1863	Unknown	11 14 8	...	11 14 8					
6th ,, ,,	(*b*) H. Bluff ..	Private ...	Ditto ..	311	17th June ..	Ditto	14 14 0	...	14 14 0					
6th ,, ,,	(*c*) Daniel FitzGerald ...	Ditto ...	Ditto ...	70	3rd Oct. 1862	Intestate	6 8 0	...	6 8 0					
6th ,, ,,	(*d*) James Higgins ...	Ditto ...	Ditto ...	279	26th Oct. ..	Ditto	6 8 0	...	6 8 0					
6th ,, ,,	(*e*) Henry Lambert ..	Ditto .	Ditto ...	115	27th Sept. ..	Ditto	5 6 8	...	5 6 8					
6th ,, ,,	(*f*) Thomas Mack ...	Ditto ...	Ditto ...	123	17th July ..	Testate	3 4 0	...	3 4 0					
6th ,, ,,	(*g*) Henry McArdle ...	Ditto ...	Ditto ...	495	24th Feb. 1863	Unknown	10 13 4	...	10 13 4					
15th ,, ,,	(*h*) John McDonnell ..	Sergeant ..	Local Artillery ..	...	5th Oct. 1864	Intestate	29 1 1	...	29 1 1					
	Total ...	...	...	...	.....	..	4,408 0 4	..	4,408 0 4					

(*a*) Widow, Mary, care of Mrs. Stevens, Godalming, Surrey; father, Edward Salisbury St. Edmonds.
(*b*) Next of kin, not known.
(*c*) Next of kin, brother, James, Marylebone, Middlesex.
(*d*) Next of kin, mother, Mary Higgins, Ballymina, Ireland.
(*e*) Next of kin, father, William Lambert, Lindridge, Worcestershire.
(*f*) Legatee, mother, Mary Doyle, Lucan, Dublin, Ireland.
(*g*) Next of kin, not known.
(*h*) Widow, Mrs. Sarah McDonnell, and a son, Samuel James McDonnell, 10 years old, Goruckpore.

FORT WILLIAM;
PAY OFFICE,
The 28th February 1865.

C. F. M. MUNDY, *Lieut. Colonel,*
Presidency Pay Master.

No. 240 *of* 1865.—His Excellency the Governor General in Council is pleased to admit Sepoy Muttra Ram, of the 11th Regiment Native Infantry, to the 3rd Class of the Order of Merit, in consideration of his conspicuous gallantry in action on the 27th January 1865, when the post of Tazagoon, on the Bhootan Frontier, was attacked by the enemy.

No. 241 *of* 1865.—The services of Lieutenant G. C. B. Simmons, of the Royal Engineers, are placed at the disposal of the Public Works Department.

No. 242 *of* 1865.—The following Military letter from the Right Hon'ble the Secretary of State for India, No. 11 of the 25th January 1865, is published for general information :—

MILITARY. INDIA OFFICE,

No. 11. *London, 25th January* 1865.

To His Excellency the Right Hon'ble the Governor General of India in Council.

SIR,—With your letter dated 5th November last, No. 376, you submit a question which has been raised regarding the rate of pension to which Medical Officers, who may be compelled to retire from sickness or accident after a service of six years, are to be held to be entitled with reference to the General Order No. 507 of 20th June 1864, which notified that Medical Officers entitled to half pay pension, under present Regulations, are eligible for the same according to their relative Army rank, as fixed by Royal Warrant.

2. By the Royal Warrant of 13th January 1860, an Assistant Surgeon, after six years' service as such, is to have relative rank as Captain. The same Warrant declares that "such relative rank shall carry with it all precedence and advantages attaching to the rank with which it corresponds."

3. My Despatch dated 16th May last, No. 152, Para. 15. stated that Officers compelled to leave the service on account of ill health, and entitled to half pay pensions under present Regulations, would, in future, be allowed the half pay of their relative rank.

4. Under these circumstances, I am of opinion that in respect to retirement on half pay, the Assistant Surgeon, after a service of six years, should be treated as an Officer having the Regimental rank of Captain has hitherto been treated; that is, without being required to show any qualifying period of service, he should be permitted to retire on the half pay of Captain, on showing sufficient proof of disqualification for further service.

5. Medical Officers under six years' service having the rank of Lieutenant, will continue, in respect to retirement on account of ill health, subject to the Regulations applicable to Subaltern Officers.

I have, &c.,

(Signed) C. WOOD.

The 9th March 1865.

No. 243 *of* 1865.—The following paragraphs of a Military letter from the Right Hon'ble the Secretary of State for India, No. 16, dated 31st January 1865, are published for general information :—

1. The under-mentioned Officers have been permitted to return to their duty, viz. :—

Colonel R. G. Taylor, C. B.
Major R. M. S. Annesley.
Captain H. R. Osborn.
" J. Leven.
" F. B. Foote.
" H. B. Webster.
Lieutenant R. S. Green.
Surgeon Major A. H. Cheke.
Surgeon E. Taylor.
" A. J. Payne.

2. The under-mentioned Officers have been granted extensions of leave for the periods specified, viz. :—

Lieut. Col. J. W. Carter,	6	months.
" J. H. Maxwell,	6	"
Major R. T. Leigh,	6	"
" W. Graydon,	6	"
Captain J. P. A. Theobald,	3	"
" F. K. Bacon,	6	"
" G. H. Gordon,	6	"
" H. F. Bamford,	12	" from 21st July 1864.
" H. W. Chapman,	6	"
Lieut. G. W. Holdsworth,	6	"
" F. B. Morris.	6	"
Surgeon Major G. Harper	6	"

3. The under-mentioned Officers have been permitted to retire from the service from the dates specified, viz. :—

Colonel S. A. Abbott, from 27th October 1864.

Surgeon Major John Campbell, M. D., C. B., from the 24th October 1864.

Surgeon Major Edward Campbell, from the 11th July 1864.

No. 244 *of* 1865.—The following order issued by the Government of Bombay is confirmed :—

No. 112, *dated 24th February* 1865.—Granting leave of absence to Europe on medical certificate to Captain J. C. Wood, of the Bengal Staff Corps.	For 20 months.

No. 245 *of* 1865.—The under-mentioned Officers have reported their return from England :—

	Date of arrival at Fort William.
Major R. M. S. Annesley, of the Bengal Staff Corps. Major S. B. Cookson, of the Bengal Staff Corps. Captain R. B. Mackenzie, of the late 12th Regiment Native Infantry. Lieutenant P. C. Dalmahoy, of the late 60th Regiment Native Infantry, District Superintendent of Police, Ooraie District.	3rd March 1865.

Surgeon Major A. H. Cheke, of the Medical Department, Civil Surgeon, Benares. Surgeon E. Taylor, of the Medical Department. Assistant Surgeon T. Duka, M. D., of the Medical Department, Civil, Monghyr.	3rd March 1865.

The 10th March 1865.

No. 246 *of* 1865.—With reference to G. G. O. No. 79 of the 18th January 1859, the return to duty of Captain J. P. Cambridge, of the late 2nd N. I., announced in G. G. O. No. 518 of the 15th April 1859 is to be held to have had effect from the 8th January 1859, the date of his arrival at Kurrachee.

No. 247 *of* 1865.—The services of Lieutenant G. D'A. Jackson, of the General List, Cavalry, Probationary Assistant Engineer, British Burmah, D. P. W., are placed at the disposal of the Government of Bengal.

No. 248 *of* 1865.—The under-mentioned Officers of the Royal Engineers, who have been placed under orders for duty in the Bengal Presidency, reported their arrival on the dates specified below :—

	Date of arrival at Fort William.
Lieutenant Frederick Firebrace. Lieutenant Thomas Brown Blake, Savi.	3rd March 1865.

No. 249 *of* 1865.—The under-mentioned Officers are admitted to the Bengal Staff Corps with effect from the dates specified opposite to their respective names, subject to the confirmation of the Right Hon'ble the Secretary of State for India :—

Lieut. Pierre Louis Napoleon Cavagnari, of the late 1st European Bengal Fusiliers, Assistant Commissioner, Dera Ishmael Khan.	10th July 1861.
Lieutenant George Constable Gregory, of the late 58th Native Infantry, Adjutant, 3rd Goorkha Regiment.	6th November 1861.
Lieutenant Francis William Grant, of the late 22nd Native Infantry, Assistant Commissioner, Berar.	12th April 1862.
Lieutenant George Bernard Johnston, of the late 54th Regt. N. I., District Supdt. of Police, Maldah.	22nd April 1862.
Lieutenant John Munro Sym, of the late 58th Regt. N. I., Quarter Master and Offg. Adjutant, 5th Goorkha Regt.	23rd Dec. 1862.
Ensign George T. Maitland, of H. M.'s 42nd Foot, Assistant Engineer, Benares Division, D. P. W.	1st March 1864.

No. 250 *of* 1865.—Under the authority of Her Majesty's Government, His Excellency the Governor General in Council is pleased to notify that an Officer Instructor of Gunnery and two Sergeants as Assistant Instructors who may be certified to have qualified themselves at the School of Gunnery established at Shoeburyness, will be allowed for each Brigade of Royal Artillery serving in India, and that the Officers and Non-Commissioned Officers who may be so appointed will receive the same Staff Allowances as those now drawn by the Instructors and Sergeant Instructors of Musketry in Regiments of British Infantry, the Non-Commissioned Officers being borne on the Staff of the Brigade instead of on the strength of Batteries.

No. 251 *of* 1865.—The services of 2nd Captain W. H. Burton, of the Royal Engineers, are placed at the disposal of the Public Works Department.

H. W. NORMAN, *Colonel*,
Secy. to the Govt. of India.

PUBLIC WORKS DEPARTMENT.

ESTABLISHMENT.

No. 77.

Fort William, the 4th March 1865.

NOTIFICATIONS.

Lieutenant F. P. Spragge, R. E., is re-appointed to the Public Works Department as an Assistant Engineer, 2nd grade, and posted to the Punjab.

No. 78.

The 7th March 1865.

The services of Private W. A. Walker, of the Sappers and Miners, having been placed at the disposal of the Public Works Department, he is appointed an Accountant of the 4th grade, and posted to Oudh, with effect from the 28th January 1865.

No. 79.

Lieutenant Colonel C. H. Dickens, R. A., Chief Engineer and Secretary to Chief Commissioner, Central Provinces, made over charge of his Office on the forenoon of the 17th ultimo to Mr. A. G. Crommelin, Assistant to Chief Engineer and Assistant Secretary to the Chief Commissioner.

No. 80.

The services of Lieutenant G. D'A. Jackson, Probationary Assistant Engineer, British Burmah, are placed at the disposal of the Government of Bengal.

No. 81.

The 8th March 1865.

Referring to Act XXII of 1863, which provides for taking land for works of public utility to be constructed by private persons or Companies and for regulating the construction and use of works on land so taken, it is notified for general information that the Right Hon'ble the Governor General in Council has been pleased to vest the Resident at Hyderabad with the same powers as are vested in

local Governments under Sections VI., VII., VIII., and XXII. of the Act.

All other powers under the Act, in Hyderabad, will be exercised by His Excellency the Governor General in Council.

No. 82.

The 10th March 1865.

Lieutenant G. C. B. Simmons, R. E., is appointed to the Public Works Department as an Assistant Engineer of the 2nd grade, and is posted to British Burmah.

No. 83.

Lieutenant G. H. L. Pole, R. E., appointed to the Public Works Department as an Assistant Engineer, 2nd grade, in Notification No. 56 of the 21st February 1865, is posted to the Nuggur Division, Mysore.

No. 84.

Notification No. 207 of 1864, transferring Deputy Assistant Commissary A. Bremner, Sub-Engineer, 2nd grade, from Bengal to the Central Provinces, is cancelled.

No. 85.

Mr. Edward Durrant is re-appointed to the Public Works Department as a Supervisor, 1st grade, and posted to the Rajpootana Circle.

No. 86.

Mr. J. L. Parker, Executive Engineer, 1st grade, Futtehgurh Branch, Ganges Canal, is appointed to officiate as a Superintending Engineer of the 2nd Class, in the Irrigation Department, North-Western Provinces.

E. C. S. WILLIAMS, *Captain*, R. E.,
Under Secy. to the Govt. of India.

ADVERTISEMENTS.

NOTICE.

Mr. Robert Stewart is authorised to sign our Firm.

GLADSTONE, WYLLIE, AND CO.

CALCUTTA,
20th February 1865.

NOTIFICATION.

Whereas much inconvenience and difficulty is experienced in the Loan and Interest Departments of this Office in tracing endorsements and receipts for interest written across the reverse of Government Promissory Notes presented for renewal or interest, notice is hereby given, with the sanction of Government, that in future cross receipts for interest will not be accepted, or further interest paid upon any note the reverse of which is filled up. The holders of notes so filled up can obtain new notes on application to the Loan Office, and on payment of the usual fees.

R. P. HARRISON,
Accts. Genl. to the Govt. of India.

COMMISSARIAT NOTIFICATION.

I. Under instructions from Government, the Tannery at Hoonsoor, near Mysore, with all fixtures, is to be disposed of, and notice is hereby given that tenders for the same will be received by the Deputy Commissary General at his Office at Madras, up to 12 o'clock noon of Tuesday, the 21st March 1865.

II. The Tannery stands in an enclosed yard about 626 feet long by 473 feet broad, and is situated on the "Lutchmen Treert" River, has an ample supply of water, and comprises—

"Bark and Raw Hide store-rooms,
"Lime and Bark Pits,
"Upper-storied Currier's shop,
"Buff Mill,
"Work shop,
"Store Godowns for finished goods,"

with all the other requisite buildings for a business capable of turning out 2,000 Hides a month in the best style.

III. The Tannery will be made over to the successful competitor on the 1st of July 1865, on his complying with conditions hereinafter mentioned.

IV. There is a large quantity of stock raw, and in process of tanning, on hand, which the successful competitor for the Tannery will have the option of taking at a valuation, composed of Australian, Cape, and Country Bullock, Buffaloe, Sheep, and Goat Hides.

V. One-third of the price to be paid down in cash on the acceptance of the successful tenders being declared, and the balance on or before the 1st July 1865.

VI. Should the successful competitor for the Tannery take the stock at a valuation, transfer of the whole property can be made at once on payment of balance of price.

VII. Failing the due fulfilment of this engagement, the purchaser will forfeit the aforesaid third of the purchase money.

VIII. Any further information required can be obtained on application at the Commissary General's Office, or to the Deputy Assistant Commissary General at Hoonsoor, who will show the Tannery.

IX. Intending purchasers must satisfy themselves of the nature and description of the Buildings and Articles. This Department will not be answerable for any errors of description.

By order,

E. E. MILLER, *Lieut. Colonel*,
Deputy Commissary General.

COMMY. GENERAL'S OFFICE,
Madras, 21st January 1865.

NOTICE.

The Interest and Responsibility of Mr. Walter Brett in the *Englishman* Press and Newspaper ceased on the 31st December 1864, by consent.

WALTER BRETT.
J. O'B. SAUNDERS,
Managing Proprietor,
"Englishman."

CALCUTTA,
22nd February 1865.

Statement of Government Promissory Notes enfaced for Payment of Interest in London, showing the total Amount outstanding according to the Registers received in this Office up to 7th March 1865.

	4 per cent. of 1824-25.	4 per cent. of 1828-29.	4 per cent. of 1832-33.	4 per cent. of 1835-36.	4 per cent. of 1842-43.	4 per cent. of 1854-55.	5 per cent. Public Works of 1854-55.	5 per cent. of 1856-57.	5½ per cent. of 1859-60.	3½ per cent. of 1853-54.	4½ per cent. of 1856-57.	Total Rs.
Amount brought forward from Statement dated 27th February 1865	53,000	300	25,59,500	22,78,400	95,63,700	65,84,200	32,26,600	4,80,14,600	2,41,17,100	17,600	16,000	9,64,31,000
ADD—												
Amount enfaced at Madras, as per Registers received up to date...	...	...	...	...	9,500	500	2,500	4,000	...	...	...	16,500
Amount enfaced at Bombay, as per ditto ditto ditto ...	...	...	...	...	...	...	...	...	...	...	...	...
Amount enfaeed at Calcutta up to date	...	...	...	21,100	9,500	5,000	22,700	45,500	12,400	...	...	1,16,200
Total ...	53,000	300	25,59,500	22,99,500	95,82,700	65,89,700	32,51,800	4,80,64,100	2,41,29,500	17,600	16,000	9,65,63,700
DEDUCT—												
Amount removed from the London Books, as per Registers received up to date ...	...	...	...	...	...	...	...	36,800	1,000	...	...	37,800
Total ...	53,000	300	25,59,500	22,99,500	95,82,700	65,89,700	32,51,800	4,80,27,300	2,41,28,500	17,600	16,000	9,65,25,900

FORT WILLIAM;
LOAN OFFICE,
The 9th March 1865.

R. P. HARRISON,
Accts. Genl. to the Govt. of India.

No. 56.

NOTIFICATION.

LOST, STOLEN, OR DESTROYED.

The under-mentioned Government Promissory Note deposited in the Treasure Chest of the late Cawnpore Executive Commissary Officer of this Division (Deputy Assistant Commissary General Captain W. W. Williamson), on the outbreak of the mutiny in the month of June 1857, by Sewbux Roy and Bissen Nath, late Contractors, is not forthcoming. The Note was endorsed in favor of Executive Commissariat Officer, Cawnpore, by the depositor, and has never been endorsed by him to any other party; payment of this Note and of interest thereupon have been stopped at the Loan Office, and application is about to be made to Government for the issue of a duplicate Note in favor of the Executive Commissariat Officer, Cawnpore.

No. 10402 of 1854-55, at 4 per cent., for Rs. 1,000.

S. CHALMERS, *Capt.*,
Depy. Asst. Commy. Genl.

CAWNPORE EXE. COMMT. OFFICE,
The 18th February 1865.

BENGAL OFFICIAL ARMY LIST.

The *Bengal Official Quarterly Army List*, No. XI, corrected in the office of the Adjutant General up to the 1st of January 1865, is now ready. Price five Rupees *in advance*, and eight annas extra if sent by post. Apply to

CALCUTTA,
6, *Bankshall Street.* O. T. CUTTER, *Publisher.*

NOTICE.

The attention of all Treasury Officers drawing Bills on the General Treasury, Bank of Bengal, is hereby called to the necessity of despatching the advices of Bills drawn by them on the day of issue. Much inconvenience is frequently experienced owing to delay on the part of Officers in charge of Treasuries in forwarding these Letters of Advices.

R. P. HARRISON,
Acctt. Genl. to the Govt. of India.

FORT WILLIAM,
The 24th February 1865.

PRELIMINARY ANNOUNCEMENT.

IMPORTANT INDIGO FACTORIES FOR SALE.

To be sold by Public Auction on or about the 20th instant (unless previously disposed of by private contract)—

By order of the Mortgagees,

The well-known Indigo Factories called the Allumchund Concern, at Allahabad, with valuable Talook property attached thereto and Koontee crop now in the ground;

also

The Koorsun Factory, Allahabad, with Koontee crop, both lately the property of N. Flouest, Esq., deceased. Further particulars and conditions of sale will be published, and in the mean while applications to be made to Messrs. W. Moran and Co., Old Mint Mart, Calcutta, and Messrs. Barrow, Sen, and Watson, Old Post Office Street, Calcutta.

LOST OR STOLEN.

Lost or stolen at Lucknow during the mutiny,

A Government Paper No. 164 of the 3½ per cent. loan of 1853-54, for Rupees 600, the property of the undersigned, which has been stopped at the Calcutta Treasury.

Notice is hereby given that the undersigned has not endorsed or transferred it.

LUCKNOW,
1*st March* 1865. SOLEMAN MIRZAH, *alias* SAIFOOD DOWLAH.

Government Promissory Note No. 333 of 23889 of 1859-60, for Rupees 1,000, at 5½ per cent., belonging to me, has been destroyed by acid.

RAMCOOMAR CHATTERJEE,
Head Asst., Barrackpore Exe. Commt. Office.

BARRACKPORE,
The 6th March 1865.

Just Published

VOLUME II

OF

SELECTIONS FROM CALCUTTA GAZETTES

OF THE YEARS

1789, 90, 91, 92, 93, 94, 95, 96, and 97.

SHOWING THE POLITICAL AND SOCIAL CONDITION OF THE ENGLISH IN INDIA

SEVENTY YEARS AGO.

BY W. S. SETON-KARR, C. S.,

JUDGE OF THE HIGH COURT OF JUDICATURE, CALCUTTA,

AND

PRESIDENT OF THE RECORD COMMISSION.

Price, Five Rs. per copy.

A few copies of Vol. I are still available, price Rs. 3.

Apply to O. T. CUTTER,
Military Orphan Press.

FOR SALE,

A COLLECTION of TREATIES, ENGAGEMENTS, and SUNNUDS, relating to India and neighbouring countries, compiled by C. U. Aitchison, B. C. S., Under Secretary to the Government of India in the Foreign Department. Price, Five Rupees per volume.

VOLUME I.—Containing the Treaties, &c., relating to Bengal, Burmah, and the Eastern Archipelago. Super royal, 8vo. pp. 372, with three Maps.

VOLUME II.—Containing the Treaties, &c., relating to the North-Western Provinces, Oudh, Nepal, the Punjab, and the States on the Punjab Frontier. Super royal, 8vo. pp. 456, with two Maps.

VOLUME III.—Containing the Treaties, &c., relating to the Peishwa, Nagpoor, and Bundlecund. Super royal, 8vo. pp. 588.

VOLUME IV.—Containing Treaties, &c., relating to the States in Rajpootana, Central India, and Malwa.

VOLUME V.—Containing Treaties, &c., relating to Hyderabad, Mysore, and Coorg, the Madras Presidency, and Ceylon.

VOLUME VI.—Containing Treaties, &c., relating to the States within the Bombay Presidency.

Printed and Published for the Government of India, by O. T. CUTTER, *at the Military Orphan Press.*

No. 9.

SUPPLEMENT TO

The Gazette of India.

CALCUTTA, SATURDAY, MARCH 11, 1865.

OFFICIAL PAPERS.

A SUPPLEMENT *to the* GAZETTE OF INDIA *will be published from time to time, containing such Official Papers and information as the Government of India may deem to be of interest to the Public, and such as may usefully be made known.*

Non-Subscribers to the GAZETTE *may receive the* SUPPLEMENT *separately on a payment of six Rupees per annum if delivered in Calcutta, or nine Rupees four annas if sent by Post.*

No Official Orders or Notifications the publication of which in the GAZETTE OF INDIA *is required by Law, or which it has been customary to publish in the* CALCUTTA GAZETTE, *will be included in the* SUPPLEMENT. *For such Orders and Notifications the body of the* GAZETTE *must be looked to.*

Government of India.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 3rd March 1865.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honour the Lieutenant Governor of Bengal.

Major General the Hon'ble Sir R. Napier, K. C. B.

The Hon'ble H. B. Harington.

The Hon'ble H. Sumner Maine.

The Hon'ble W. Grey.

The Hon'ble H. L. Anderson.

The Hon'ble J. N. Bullen.

The Hon'ble Mahárájá Vijayaráma Gajapati, Ráj Bahádur of Vizianagram.

The Hon'ble Rájá Sáhib Dyál Bahádur.

The Hon'ble G. Noble Taylor.

The Hon'ble W. Muir.

The Hon'ble R. N. Cust.

The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.

The Hon'ble D. Cowie.

CALCUTTA GREAT JAIL BILL.

The Hon'ble the LIEUTENANT GOVERNOR presented the Report of the Select Committee on the Bill to remove the Great Jail of Calcutta from the control of the Sheriff, and transfer it to that of the Government of Bengal.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. TAYLOR presented the Report of the Select Committee on the Bill to amend Act XVI of 1864 (to provide for the Registration of Assurances).

The Hon'ble MR. TAYLOR also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

He said that he asked His Excellency to suspend the Rules, because it was desirable that the Bill should be passed at once, in order that the Registrar General of Bengal, and similarly the Registrars General of the other Governments, might be in a position to proceed as early as they pleased to visit the subordinate offices in the Mofussil.

The President declared the Rules suspended.

The Hon'ble MR. TAYLOR then moved that the Report be taken into consideration.

He said that on asking for leave to introduce the Bill, he had explained to the Council the primary objects of the measure. In consequence of the various suggestions to which he alluded last Friday, the scope of the Bill had been slightly enlarged in Committee, and it now contained several additional provisions. All the suggestions, from whatever quarter they came, had been carefully considered. Some had been adopted, and others the Committee had not considered it expedient to introduce into the Bill.

A Section had been added providing for the introduction of a few words into Section 10 of the Act, empowering the Registrar General, in the case of the absence of a District Registrar or of a vacancy occurring in that office, to appoint a fit person other than the Judge of the principal Court of original jurisdiction to be District Registrar. The 10th Section, as it stood, enacted that the Judge should be ex-officio District Registrar whenever a vacancy might occur in that office, which was elsewhere held by the Collector or other executive officer. Having regard, however, to the arrangements about to be made in the North-Western Provinces,

under which the Judges would be the ordinary District Registrars, it became necessary to provide for the appointment of some other person to perform the duties of the office during the occasional absence of the Judge. The first Section of the Bill accordingly provided for this.

The Committee had also added a clause to Section 13 of the Act, providing that the Section should not apply to any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company should consist in whole or in part of immovable property. As a matter of fact, such shares were changing hands almost daily without registration of the instruments by which the transfer was effected, such instruments being executed however on stamped paper. There could be no question that if registration were insisted upon, it would lead to a systematic evasion of the law and have an injurious effect on public morality. As doubts had been entertained and different opinions expressed on the subject, the Committee, with the approval of His Excellency the Governor General in Council, had introduced the declaratory clause in question, exempting from compulsory registration instruments relating to such shares.

The next amendment was one for the suggestion of which he (Mr. Taylor) was indebted chiefly to his Hon'ble friend the Mahárájá of Vizianagram. Section 25 of the Act prescribed the course to be followed in regard to the registration of instruments affecting immovable property situate in more than one District. It provided that the District Registrar to whom such instrument might be presented should forward a copy to every Deputy Registrar of *another* District in which any of the property concerned might be situated, but it did not expressly say, though this was obviously intended, that he was also to furnish a copy to each Deputy Registrar in *his own District* in whose jurisdiction any of the property was situate.

The Committee had therefore repealed Section 25 and replaced it by a new Section, in which the intention of the Legislature was carried out more clearly and conveniently than before.

But the most important addition to the Bill, however, was Section 5, which provided for the recognition, under due precautions, of powers of attorney executed by persons who had left India, but which had not been executed or attested in exact compliance with the terms of Section 28 of the Act.

The 28th Section enacted that no power of attorney executed by a person residing in *British India* should be recognised for the purposes of the Act, unless it was executed in the presence of a Registrar and duly attested by him; and as regarded a power of attorney executed by a person residing *out* of India, that it should not be recognised unless executed before, and attested by, an officer of the British Government or a notary public. It had been represented that a considerable number of Europeans had returned home retaining property in India, who, before they left the country, gave general powers of attorney to their agents to sell or otherwise deal with their property. The requirements of the Act had rendered all such powers inoperative; and it was practically very difficult, even if there had been time to do so since the Act came into force, to obtain new powers, in substitution of the old ones, from persons who were in various parts of Europe, or who might possibly be travelling in some distant quarter of the globe. Then, again, it had been urged that many powers of attorney executed in Europe had been attested, sometimes by persons who were long resident of India, whose signatures were well known and easy of proof, and sometimes by the Lord Mayor of London or other similar functionary, who did not come within the definition either of an officer of Government or of a notary public. All such powers were in like manner useless under the terms of the Act. Obviously, therefore, on the ground of public convenience, such an amendment of the law was desirable as would bring all such *bonâ fide* instruments within the provisions of the Registration Act. The difficulty was adequately met by the provisions of Section 5 of the Bill, which prescribed that every power of attorney executed by persons *who were not still in India*, should be recognized for the purposes of the Registration Act, provided that within three months from the passing of the Bill (which allowed ample time for the production of all such deeds) the Registrar General, after making such enquiry as he might think proper, should have certified upon the deed, that it had been duly executed, and that, in his opinion, it might be taken as if all the requirements of the Act had been complied with. This removed all difficulties.

The Committee had not recommended any further alterations or amendments. As he said before, all the suggestions which had been made had received the most careful attention. Among those which it had not been deemed expedient to adopt, some would involve a change in the law; others, the removal of wholesome restrictions imposed by the Act which could not have been removed without impairing its usefulness; and others, again, related to matters of routine, or supposed defects in administration, the remedy for which was in the hands of the controlling officers of the Department.

The Act had been only three months in force, and among those most competent to judge, there was perfect unanimity of opinion as to its admirable working in all parts of the country. Even during the short time it had been in operation, the effect of the measure was said to have been most remarkable in restraining the production of doubtful and fraudulent instruments, and in diminishing litigation. A High Court Judge, not, it should be mentioned, on the Calcutta Bench, was reported to have said, in reference to the falling off of business in the Court, that his occupation was gone, an observation which was not, of course, intended to be taken without some reserve.

This being so—the working of the Act being in every respect so satisfactory—it would clearly be injudicious, or at all events premature, to introduce any change in the law, or to make any alteration of principle in a Bill, framed as this was, to supply a few obvious defects, and which it was desirable to pass within as short a period as possible. It would be time enough to do this when longer experience of the working of the Act should have fully shown the necessity for such changes.

The Motion was put and agreed to.

The Hon'ble Mr. Taylor also moved that the Bill as amended be passed.

The Motion was put and agreed to.

Indian Civil Code, Chapter I.

The Hon'ble Mr. Maine moved that the Report of the Select Committee on the Indian Civil Code, Chapter I, be taken into consideration. He said—"Sir, postponing for a few moments any discus-

sion to which the amendment proposed by my Hon'ble friend Mr. Muir may give rise, I do not think that I can usefully occupy the time of the Council with observations of any length in asking it to take the report into consideration. The Select Committee has most carefully considered the Code, both in the whole and in the detail. Together with the revised Code of Civil Procedure introduced by my Hon'ble friend Mr. Harington, it has formed a principal portion of the labours of a most laborious Session. The Committee have said in their Report that they have bowed to the opinions of gentlemen so eminent and learned as the Indian Law Commissioners, and accordingly the amendments they have proposed, though not inconsiderable in number, can hardly be styled of great importance. Some few of the points discussed in Committee the Commissioners themselves would allow to be disputable. But the dissentient Members have preferred the opinion of the Commissioners to their own. Of the amendments, a few are corrections of manifest errors: others are additions to the illustrations, and will contribute greatly to the intelligibility of the new law: others are transpositions and changes of arrangement which I believe to be of much value, and will greatly increase the facility of reference. There seem to me to be only three changes which can be deemed to be at all material. The principal of these is the extension to other races besides Hindús and Muhammadans of the exemption from the Code. These are contained in the last two Sections of the Bill. Both in my Statement of Objects and Reasons, and in my remarks to the Council when introducing the Bill, I said I believed that there were many races in India, not included within the exceptions of Hindú and Muhammadan, to which it would be unwise or inexpedient to apply the new law. All the papers which have since come in have strengthened my conviction, and recently a despatch has been received from Her Majesty's Government expressing acquiescence in this view. The Secretary of State suggests that exemption from the Code should be accorded to all races of India which have definite rules of succession and inheritance. It is, however, somewhat difficult to frame a provision founded entirely on the definiteness of such rules, for want of any satisfactory criterion of definiteness. And thus, while practically giving effect to his opinion, in which we concur, we have not carried it out in precisely the way recommended.

The papers received from British Burmah show that all the Buddhistic races have a system of law definite in the same sense as the laws of the Hindús and Muhammadans—definite, that is to say, as being prescribed by their sacred books. We have therefore not hesitated to add Buddhists to Muhammadans in the exempting Section. We have further provided for the contingent exemption of other races by empowering the Governor General in Council, either retrospectively from the passing of the Act, or prospectively, to exempt from the operation of the whole or any part of the Act the members of any race, sect or tribe in British India. Whether the Parsees will have to be exempted under this Section by order of your Excellency in Council will depend on the result of the impending discussion on the two Bills in charge of my Hon'ble friend Mr. Anderson.

Sir, we have further altered the title of the Bill. The Secretary of State, speaking apparently on behalf of the Law Commissioners, has suggested that they may not wish this part of the Code to be its first Chapter. Now nothing can be more capricious than the arrangement and classification adopted by existing systems of jurisprudence, and I can quite conceive a Code of laws which had a Chapter on Succession for its first Chapter. But the Commissioners are of course entitled to settle the order of Parts in the body of jurisprudence which they have prepared; and I can quite understand that they may wish at all events to place all their definitions at the beginning of their Code. We therefore propose to change the title "Indian Civil Code, Chapter I," and to call the Act "The Indian Succession Act, 1865."

We have also made a not immaterial alteration in the system of probate proposed by the Commissioners. Their scheme not only provides that the Zillah Judge shall be the principal Judge of Probate in his District, but that he shall have power in non-contentious cases to delegate his authority to a functionary called the District Delegate. This latter machinery was probably provided in the expectation that the Code would have a much wider operation than is likely at first to belong to it. We do not think that the additional labour thrown on the Zillah Judge by the granting of probate and letters of administration under this Code will, for a time at least, be considerable. Moreover—though it is a point on which I cannot myself express a confident opinion—those Members of the Select Committee who are most familiar with the Mofussil believe that the power cannot safely be confided to any lower authority than the Zillah Judge, and are afraid that any other arrangement will afford facilities for forgery and fraud.

I may add that we have saved the powers of the Administrator General in their plenitude, and have added a schedule of fees payble when probate or administration is taken out, or when a caveat is lodged.

Sir, though we thus propose to contract greatly the primary sphere of the operation of this new law, I do not feel inclined to modify the language which I employed when I introduced the Bill to the Council, as to its great importance to India. To the European community it will prove, I believe, an unmixed advantage, and will even deliver them from dangers which perhaps they do not quite appreciate, but which I regard as imminent and serious. But I must describe it as scarcely less of a boon to the rest of the people of India. Sir, insensibly and gradually, large sections of the Hindú and other communities have acquired the power of testamentary disposition, which probably, and indeed certainly, was not enjoyed by them under their ancient usages. Now, there is no stronger stimulant to civilization than the liberty of testation; but I am afraid that there is a heavy set-off against its advantage in India through the encouragement afforded to fraud. Your Excellency in Council, if this Bill becomes law, will probably think fit to enquire of those who are most competent to speak with authority, whether the provisions of this Code relating to testamentary disposition might not safely be extended to all the races of India who have the power of making Wills. I must further bring to the notice of the Council that this Bill contains a part of a vast mass of law, which is accepted as law by all the civilised races of the West, independently of express enactment. The rules I refer to are deemed to embody first principles, or direct deductions from first principles.

Whatever be their true origin—and the better opinion is that most of them descend from the Roman Civil Law—they have long commended themselves to the common sense of all European communities. Even in England, this body of rules has never been put into so intelligible and accessible a shape as it is placed by this law. English practitioners have to gather it painfully from dispersed treatises and detached law-reports. Even if this part of our Code were nothing more than a repertory of these rules, it would be difficult to overrate its value, for the want of such a repertory is greatly felt in our Mofussil Courts, and I have no doubt that the definite rules contained in it will rapidly fill the void which is now somewhat vaguely occupied by inferences from the not very certain canon of "equity and good conscience." But beyond all doubt, the great influence of this Code will be its influence as a model and a type. Judging by experience, there are no limits to the influence which a clear and simple body of written law exercises in absorbing less advanced systems of jurisprudence. The great example of this is of course the French Codes, which, violently detested and vehemently decried after the collapse of the French Empire in 1815, give now in 1865 the law to all but a fragment of Continental Europe. Through the effects of this power of absorption, I have no doubt that, if our Bill become law, it will ultimately deserve the title which at present we hesitate to give it, that, namely, of "The Indian Civil Code."

The Motion was put and agreed to.

The Hon'ble MR. MUIR—"Sir, in pursuance of the notice which has now been in the hands of the Council for several days, I beg to move this amendment, namely,—

That the following Sections be omitted from the Bill, and their consideration deferred until the portion of the Civil Code on marriage and its effect on property is brought forward :—

Section 43.—"No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried.

Section 44.—"If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage."

Sir, my Hon'ble friend, on the occasion of introducing the Code, made use of the following remarks :—

"One thing more I have to say. I venture to predict that when the first Chapter of the Civil Code has been examined and discussed by the Council and its Committee, the strongest impression left on their mind will be respect for the Commissioners who prepared it."

He added—

"I may say that their labours are probably destined to exercise hardly less influence over the countless communities obeying English Law than the French Codes have exercised and still exercise over the greater part of the Continent of Europe."

Having had the honour of a seat in the Select Committee, which has been engaged now for some months in carefully and patiently reviewing this Code, I am in a position heartily to concur in this praise, and in the eulogy which my Hon'ble friend has just passed upon it. I do not yield to any Member of the Committee, in gratitude to the framers of the Code, for their disinterested labours and the benefits thereby conferred on India, nor in admiration of that most sound, substantial, and symmetrical system of law now before the Council.

Upon any question of a legal character, I should not have ventured to controvert the opinion of those eminent authorities, nor to have differed from my Hon'ble friend, to whose views I wish always to defer, and whom upon legal questions I should be disposed implicitly to follow.

But, Sir, this is not a matter of mere legal bearing : it has a reach far beyond that of any ordinary point of law. And it is because I believe that the provisions contained in Section 43 will injuriously affect the frame-work of society and the foundations of domestic life, that I have ventured to call them into question.

This Section lays down the normal rule of the married relation, that is, the rule which shall prevail in the absence of any special stipulation. It provides that "no person shall by marriage acquire any interest in the property of the person whom he or she marries." The husband will acquire no interest whatever in the property of the wife nor the wife in the property of the husband. Each will possess the respective property existing at marriage, or acquired after marriage, altogether independent of the other. The wife will have the right to manage her own property, and to receive all rents, profits, and revenues thereof, on a footing entirely separate and distinct. For the Section goes on to say that neither party shall "become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried. The wife is thus empowered to act separately and independently in respect of her property, to enter into obligations, to bind herself, for example, as a surety, to trade, to speculate, to sue and be sued, not only without the consent, but even against the will of her husband. In fact she will have as entire and absolute a right of property and as separate and independent a right of action in respect of it, as if she had not married.

Now, what I wish to urge upon the Council is, that this is a state of law different from any which has ever existed, or which does at present exist anywhere, excepting, perhaps, among the Mahometans. I wish to urge that the nearest approach to such a condition belongs to a period when society was demoralized and the conjugal relation lax. I will also show that the tendency of European society has been to recede from such separation of interest between the husband and wife, and to re-establish in greater or less degree a community of interest between them.

As remarked by my Hon'ble friend, the Roman Civil Law forms the substratum of the law generally adopted in Europe; and I will therefore state its provisions on the subject. In the earlier periods of Roman history, the marriage ceremony placed the property of the wife entirely at the disposal of the husband; it passed *in manum viri*; and so strongly was the integrity of the family preserved that the wife was regarded at law as a daughter.

To this extreme stringency succeeded an equally extreme laxity. Marriage came to be an ordinary contract into which the husband and wife entered on equal terms, each retaining a right of property altogether independent of the other. But the wife could not transfer her property to the husband without a full consideration; so that the system had this advantage, that it protected the wife. Now this independent right of property in the wife existed during a period when society was marked by an extraordinary laxity of manners, and looseness of the marriage bond. As remarked by Mr. Burge,

at this time "the frequency of divorces and the frivolous causes for which they were granted, formed a striking contrast to the simplicity and purity which distinguished the earlier period of Roman history."

The rule of separate property having been thus incorporated in the Civil Law, was naturally pressed by the advocates of that Code, more or less, upon the nations of Europe. But the intuitive sense which prevailed as to the unity and integrity of the family, resisted its application, and at length secured in every nation community of interest in a greater or less degree between the husband and the wife.

I will begin with Spain, because the Civil Law of marriage seems to prevail there more completely than in any other country Originally, in fact, the law of marriage in Spain was precisely that of the Civil Code. But by degrees a community was introduced of this nature:—the wife retained her title to the property which she possessed at marriage; but all gains, rents, profits, and acquisitions, whether from the wife's property or other sources, *subsequently to marriage*, fell into the common stock. This is called *communio quæstuum*, and is now the law of Spain. "This community," says Burge, "silently and imperceptibly acquired a place amongst the usages of Spain." In fact, the national instinct rebelled against the unnatural rule of the Civil Law, and reverted spontaneously to the natural law of community. The wife cannot trade without her husband's consent; and I may add, that in Trinidad, an order of British Council still further modified the Spanish law by introducing a somewhat greater degree of common responsibility of husband and wife for their respective debts.

I will now allude briefly to the laws of other European nations.

In Holland, when there is no express stipulation to the contrary, there prevails "universal community," which brings under a joint interest the entire property of husband and wife, both that which existed prior to marriage, and that which may be acquired after marriage. Even when this arrangement is specifically excluded, there still remains the "particular" or restricted community, which (like the *communio quæstuum*) extends to all acquisitions during marriage. The husband is also curator of the wive's property; as such, manages and administers it.

This is also the law in Ceylon, the Cape of Good Hope, and British Guiana.

For the law of France, I beg permission to quote from Storey:—

"When no special stipulations exist, the case is governed by what is denominated the rule of community, *le régime de la communauté*. This community or nuptial partnership generally extends to all the movable property of the husband and wife, and to the fruits, income, and revenues thereof, whether it is in possession at the time of the marriage, or it is subsequently acquired. It extends also to all immovable property of the husband and wife acquired during the marriage; but not to such immovable property, as either possessed at the time of marriage or which came to them afterwards by title of succession or by gift. The property thus acquired by this nuptial patnership is liable to the debts of the parties existing at the time of the marriage; to the debts contracted by the husband during the community, or by the wife during the community with the consent of the husband; and to debts contracted for the maintenance of the family and other charges of the marriage. The husband alone is entitled to administer the property of the community; and he may alien, sell, and mortgage it without the concurrence of the wife. The husband becomes the head of the family; and the wife can do no act in law without the authority of her husband. She cannot, therefore, without his consent, give, alien, sell, mortgage, or acquire property."

The same law prevails in the Mauritius, St. Lucia, and French Canada.

In Scotland, marriage establishes a community of movable property. The wife retains the title to her heritable property, but all its proceeds fall into the common stock. The husband is curator of the wife's estate, which she cannot alienate without his consent. If there be issue, the husband acquires a property in his wife's estate.

The law of England need be but briefly mentioned. By it, marriage is a gift to the husband of the wife's personal property; it confers upon him the freehold of her real property for his joint life; and if there be issue, for his entire life. The wife cannot contract in respect of any property not settled for her separate use.

In America the law is based upon that of England, the several States following it more or less closely; excepting Louisiana, where a rule prevails resembling the communio quæstuum.

This detail (for the length of which I must apologize to the Council) was necessary to prove my position. It does prove, so far as I have been able to prosecute the enquiry, that there is no European nation, or European dependency, of which the law at all resembles that which is laid down in this Section. In all, there is a community more or less complete; absolute and universal as in Holland; restricted as in England and Scotland; or still more restricted as in France and Spain. The weakest form existent anywhere is the communio quæstuum, or community of acquisitions during the marriage.

I need not stop to point out how completely different is the effect of this Section, by which the wife possesses her property, acquired either before or after marriage, entirely separate from her husband; and possesses a power over it as independent and uncontrolled as if she had never married.

As the wife is not responsible for the debts of her husband, and the husband possesses no controul over the property of his wife, it might be contended that neither is the husband in equity responsible for his wife's debts, but that she should be responsible for her own debts both in her property and in her person.

I apprehend, however, that this would be a state of things that could not consist with the usages of civilized society. And yet, if the husband is to bear an *unlimited responsibility* for his wife's debts, it is only natural that he should have some controul over the disposal of her property,—at any rate over that part of it which was not settled by an ante-nuptial contract for her own separate use. By existing law, the husband does now bear this unlimited responsibility; and he will continue so to do, unless that responsibility be removed in the future portion of the Code which relates to marriage. I ask, then, how can we fairly perpetuate the responsibility of the husband for the debts of his wife, when we have taken from him the corresponding right of controul over her property?

Perhaps my Hon'ble friend will be good enough to explain to the Council what will be the future course of legislation in this respect;—whether it is intended to retain the unlimited responsibility of the husband for the debts of his wife: and if so, by what corresponding provisions it is contemplated to protect the husband; whether her property is to be primarily responsible for her debts, and the husband only in the second degree;

or in what other way their relative responsibility will stand.

I contend that, until these points are known, the bearing of this Section cannot be satisfactorily understood. To make a sweeping change of this nature, while as yet its ultimate effect is hidden from us, is to legislate in the dark. However much we may respect and trust Her Majesty's Commissioners, the Council should not thus be called on to pin their faith to a proposal which is only half developed.

The only indication which I can find of their intention is in Sections 183 and 189, where it is laid down that probate and letters of administration cannot be granted "to a married woman without the previous consent of her husband." She will, therefore, not be able to bind her property by any acts performed in execution of a will or administration of an estate, undertaken without her husband's consent. But there must be a multitude of other restrictions to which the husband is equally entitled if he is to be held unlimitedly responsible for the debts of his wife.

Sir, I object not merely to the separation of property introduced by Section 43; I object altogether to this piece-meal legislation which gives us the part of a law, and leaves the complement necessary to the full comprehension of its bearing and effect, indefinitely to some future period. I cannot think that this style of legislation is right and proper.

In justification of the change, it has been urged that, although the law of England is as I have stated, it is yet habitually over-ridden by marriage settlements; and that the effect of marriage settlements is the same as the new law. Thus the Commissioners in their report say:—"such powers as we propose to confer on the wife are frequently reserved to her, even in England, by the terms of her marriage settlement." The Law of marriage settlements is dangerous ground for the uninitiated to tread upon. But I believe I may appeal to my Hon'ble friend to support me in saying that the state of property produced by an ordinary marriage settlement is essentially different from the project under discussion. For, in the first place, that arrangement secures to the wife the property settled for her separate use, in such wise that (as under the old Civil law) she has no power to transfer it to her husband. Now, under Section 43, the wife may at any moment give away and surrender the whole of her property or any part of it to her husband: she possesses full and absolute power of alienation to her husband, as to any other. I need not point out that this provides no satisfactory protection to the wife; and instead of that Section producing the same state of things as an ordinary marriage settlement, that, on the contrary, marriage settlements will be hardly less necessary under it than at present. In the second place, an ordinary marriage settlement confers no power on the wife save and except over the specific property separately settled upon her; whereas, Section 43 confers on her an absolute and unrestricted right of contract and disposal in respect of all property whenever possessed or however acquired. I believe, therefore, I am justified in asserting that Section 43 will create a state of property in the wife, entirely different from the disposition of property prevailing under ordinary marriage settlements.

It was also urged in Committee, that, although the husband does lose in being cut off from any interest in his wife's property, he will obtain a corresponding advantage, since his wife's property will not be liable to seizure for his debts. Sir, this appears to me a very questionable argument. For, in the first place, it proceeds on the assumption (which the supporters of the Section deny) that the husband does possess a natural and equitable interest in his wife's property; and secondly, this provision will often tend to defraud the creditor of his just dues. For it enables the husband to contract debts, arising probably out of the common necessities and obligations of the family, and yet it holds back from the creditor property that is fairly liable for such debts.

But, Sir, for any minor objection of this nature, I should not have ventured to oppose the new provision. I oppose it because I think that its tendency will be detrimental to society, and will affect the unity of domestic life.

I adhere to the ancient belief that the family is, by the very constitution of human nature, an indivisible unit. And any legislation tending unnecessarily to break up that unit, must produce a baneful effect. In the family, the children are bound in obedience to the parents; the husband is the head of the wife; and thus he is the head of the whole family. It may be the fashion of modern views to decry this ancient belief, and assert the equal and independent rights of women. I cannot share in these views; I believe them to be fraught with danger. I think that the drift of the new law is in this direction. As the Hon'ble Mr. Campbell has remarked:—

"The question then really is—shall we now enact by one Section in a Chapter on successions that marriage shall no longer be that intimate and unlimited partnership on which the institution of the family as a corporate unit is founded, or shall we leave that great question to be settled in its proper place?"

I confess my own conviction that the proposed law will have a tendency to sow the seeds of disunion and alienation in the married state; to introduce division, where the normal relation of husband and wife implies unity, of right and title; to break up the family into two distinct heads, each with its separate property and establishments, separate obligations and responsibilities, separate and it may be antagonistic interests.

In so far as this state of things prevails, the common authority of the parents will be weakened. A separation of interest between them will distract the filial devotion of the children, and diminish the motives for honor and obedience. The bond which knits the family together will be enfeebled.

For these reasons, I concur in the opinion expressed by the Hon'ble Mr. Seton-Karr in a passage of his report upon the Bill, which I trust the Council will permit me to read in their hearing.

"This Section seems to me to involve a very important and, I must say, a dangerous deviation from the principles on which marriages have been hitherto concluded. I am aware that this change finds favour with several eminent Law Reformers; but, in my own opinion, it is a change of a novel, undesirable, and formidable kind. A question of this sort will always more depend on, and be ruled by, social and domestic feelings, than by logic or knowledge of law. But I think that feeling, past experience, and that reason which we apply to the ordinary transactions of life, are equally against the new view now set up. The onus of proving the paramount necessity of such an alteration lies on those who propose it. I cannot think that it will tend to increase the number of happy marriages. On the contrary, it may have the effect of sowing dissensions where none existed previously, and of adding to any existing sources of discontent between man and wife. It involves a fundamental change in the conditions of married existence, which seems to me wholly uncalled for; likely to create feuds or to in-

crease them; at variance with a principle well known, popularly accepted, and long established in England; subversive of the harmony and well-being of the closest social intercourse; opposed to the wholesome relation in which the woman stands to the man; destructive of mutual dependance and honour, and a mere concession to the levelling spirit of the present age, presented under the guise of a questionable liberality.

"Had I a vote to give, I would unhesitatingly give it against any such proposal which seems to me much at variance with the other parts of this excellent Code."

I ask, then, on what account it is proposed to introduce this dangerous innovation? Is it to protect the wife against her husband? I have before shewn that it will fail to afford her any adequate protection. She may, the very next day after marriage, surrender her property into the husband's hands. At times of weakness, distress, or necessity, the inducement to such surrender will no doubt be often irresistible. I repeat, then, this Section affords no protection to the wife against a bad, designing, and selfish husband. And I contend that the same object may be equally well secured, perhaps secured much more efficiently, without abandoning that community of interest recognized everywhere.

Is it a reason in favour of this new principle, without a parallel in Christendom, that it is in conformity with the Mahometan law? Sir, I cannot think this a happy augury. From my own observation I may say that the Mahometan rule on this point, without raising the female sex, has plainly tended to produce disunion and dissension, to create and to fan feuds of family, to encourage litigation, and break up the household into parties, the children siding one way or the other. I am far from saying that there are not other causes at work in Mahometan society to produce these evil results; but the distinct influence of this rule in producing, as its natural and legitimate result, the effects I have described, cannot escape the careful observer. It has forced itself painfully upon the notice of Mr. Campbell, whose long experience as Judicial Commissioner in Oudh gives special weight to his opinion. He thus writes:—

"Among them (the Mahometans) only has this law hitherto prevailed in India. It is now proposed to extend it to all, Englishmen, Christians, and others, as the *lex loci* of the land. After administering justice for some years in the greatest and wealthiest Muhammadan city in India, I have become so deeply impressed by experience of the disunion and ruin of families worked by this law of husband and wife, that I think it my duty to state my apprehensions before that law is so widely extended."

And again, after asserting the rule of unity and community in the family as the indefeasible law of Christianity, he proceeds:—

"But if it be said that this is not a Christian country, and that the legislature is not a Christian Legislature, then I shall be prepared to say that the result of my experience goes most strongly to show that, in practice, the freedom of the individual spouse and the reduction of marriage to a mere contract on such terms as may please the parties does not work well; that under such contracts nothing like the family subsists; that man and wife are no more to one another than two partners; that when they have their separate interests, separate rights, separate establishments, the name of marriage is degraded; the status and the honour of families is destroyed; the family itself ceases to exist."

But for whom is this law intended? Hindoos, Mahometans, and Buddhists have been excepted from its operation; and all tribes having their own laws on the subject will also be exempted. The law then will apply to European settlers, to classes of mixed blood, to Native Christians, and to the Races scattered throughout India not specially exempted from its operation. Do any of these classes desire this novel Law which the Council is about to impose upon them? Do the Native Christans desire it; or those who are the natural guardians of their interests—have they expressed the opinion that it will tend to their welfare? Have the Anglo-Indian classes exhibited any preference for this rule? Is it likely to approve itself to the European settlers? In answer to this last enquiry, I was told, "Oh! if the Settlers do not like the law, they need not *domicile*, and then they will be free from its provisions." Sir, I refuse to accept this as a satisfactory reply. We should not discourage, we should rather encourage, the European settlers to acquire the domicile of the country. We should do this, not simply by providing facilities for the registration of domicile, but by the enactment of laws conformable to the usages of Europeans nations, and the customs and prepossessions (or, if the advocates of this Section will have it so, the *prejudices*), of those who come to settle here.

How will the law affect the Native tribes and races scattered throughout the Peninsula? Do they desire it; will it be suitable for them? It has been urged in reply to my argument, that marriage-settlements in England, reserving a separate property for the wife, do not produce disunion or estrangement: why then should those results be apprehended in India? I reply,—I have already shown that the effect of the proposed law will entirely differ from that of an ordinary marriage-settlement; the latter being limited in its operation, and yet forming a perfect protection to the wife. An arrangement of this nature, by previous consent of parties, in no way resembles the absolute independence conferred by the projected law; the one may be innocent, while the other is dangerous. But farther; a system which may be suitable to the advanced state of civilization in England, will not necessarily be suitable for India. Were it even admitted that the effect of the new law would be precisely the same as of an ordinary settlement compatible in England with domestic harmony, it would not follow that such a law is fitted for the Native classes in India who will gradually fall within its scope, or for the extensive bodies of Native Christians in various parts of the country. These belong to an entirely different stage of civilization, a simple, rude, and backward stage, at which it is of extreme importance to maintain the integrity of the family and to uphold the authority of the husband as its head. For them, at any rate, the projected law would be surely most unsuited.

Sir, I am far from holding that some modification of the English Law of marriage may not be expedient. It may even be indispensable to simplify that law by removing, for example, the subtle distinctions now prevailing between personal and real property; and it may also be possible to afford substantial protection to the wife without unduly weakening the safe-guards of community of property Possibly this might be done by some approach to, or modification of, the French *régime de la communaute*. But if any change of this nature be attempted, I would urge that it be deferred till the Chapter upon Marriage, when alone, as I have already shown, the full bearing and effect of this measure will be understood.

I have a further objection to the present position of this Section. To that position must, I believe, be attributed the almost total absence of discussion on the subject. Excepting the opinions of the

two gentlemen already quoted, the Committee have received no comments whatever on this important point. Nor have I observed the subject discussed—as it is natural to suppose a topic like this of the deepest and widest social bearing would be discussed—in the public journals. I do not attribute the apparent absence of interest towards a change of such vital importance to any neglect of their duty on the part of the leaders of the public press. Who, in fact, would look for the Law of Marriage in a Chapter on Intestate Succession and Wills? You might as well expect there to find Rules for the Income Tax or for Police, or the Law of Insurance, as there to find the Law of Marriage. In a word, had it been an object to pass this Section in a close and surreptitious manner, it could not have been done more successfully. I am far, of course, from saying that this has been in any measure intended. But the effect has been the same. I repeat, attention has not been attracted to the subject; there has been absolutely no discussion of it. I submit, therefore, that the Council should not precipitately pass this measure without having the benefit of opinion out of doors. I would urge that, if necessary, the whole Bill be postponed for such a period as will admit of a fair and full consideration of the measure by those whose dearest interests are affected by it.

In conclusion, Sir, I have shown that the proposed measure differs essentially from the law of every other nation; there is no people among whom community of married interest does not more or less exist, excepting the Muhammadans. I have shown that it will maintain the unlimited responsibility of the husband for the debts of his wife, and yet take from him the corresponding control over her property. I have shown that the effect of this project will be entirely different from that of an ordinary marriage settlement. I have shown that it may defraud the creditor of his just dues. I have shown, at least, my opinion is, that the abolition of community, and establishment of a separate and independent interest, will be injurious to society, encourage dissensions in the family, and weaken the domestic bond. I have shown that the new law will not protect the wife against a selfish and designing husband. I have demanded proof that the change is desired by the classes for whom it is intended, or that it is suitable for them. I have shown that, at any rate, it should be deferred till the enactment of the Law of Marriage, in the light of which alone its effect and bearing will be fully seen. And lastly, I have shown that the intended change has not received the attention of the public, nor the full discussion to which so vitally important a measure is entitled.

And, yet once again, I ask why this novel and dangerous innovation is to be made in India? Has any European nation found the prevailing law of community so irksome or injurious that endeavour has been made to get rid of it? The tendency has been, as I have shown, rather to revert to that state of community where it had been lost sight of. Have any of the dependencies of the nations of Europe abandoned the law of community as burdensome or inequitable? They are not bound, as it might be said the mother-country is, by ancient prejudices or prescription. They have free Legislatures of their own. Has any change, any attempt at change in this respect, been made by them? In New South Wales, for example, or New Zealand, or Canada, the Cape, Ceylon, Mauritius, in short in any European dependency, have steps been taken to shake off this time-honoured law? Has any one of the American States done so? And yet they are not slow at novel legislation, and sometimes also vaunt the rights of women. I do not know that even there, any endeavour has been ever made to introduce so sweeping and radical a change. Sir, I have sought diligently for a precedent in the experience of nations to justify this law; and I have sought in vain.

In vain have I sought for a reason to justify to my own mind this strange and novel rule. The only reason which I have lighted upon is contained in the following extract from my Hon'ble friend's opening remarks in the speech already quoted. He spoke thus:—

"I may say that, in proportion to the judicial or professional eminence of an English lawyer is his sensitiveness to the undoubted faults of English law, and his anxious desire that, to that strong and solid structure of common sense which constitutes its mass, there should be added excellencies to which it certainly cannot at present lay claim—simplicity, symmetry, intelligibility, and logical coherence.

Sir, simplicity, symmetry, and logical coherence, are unquestionable excellencies. But I submit that, for theoretical advantages like these, no experiment should be adventured which may imperil the best interests of society. Let those who desire it make the experiment upon themselves; or let it be tried upon some inferior subject. It is usual to say that an untried experiment involving vital interests ought to be made first upon an inferior subject. But I submit that India, and the settlers spread over its plains and mountains, are no such ignoble body as to be made the first and earliest subject of this trial. I therefore urge it upon the Council, and entreat earnestly, that these Sections be omitted from the present Bill, and their consideration postponed until the chapter upon marriage is reached; by which time some wise and middle course may be struck out which shall combine the undoubted excellencies of simplicity and logical coherence with the adequate protection of the wife, yet without sacrificing that community of interest between husband and wife which is recognized throughout the length and breadth of Christendom."

The Hon'ble MR. MAINE.—"The first observation which my Hon'ble friend's speech calls for is a reply to his remark that this Section has not been discussed by the Indian Press. It so happens that it is the only Section which has been discussed. We sometimes suffer from the want of discussion on the part of the Press: but the observations on this provision which I made when I introduced the Bill were really elicited by comments on it in an Indian newspaper for whose readers I intended the explanations which I then offered, and which I am about to repeat.

I submit to my Hon'ble friend that it will be impossible to carry his amendment without going further. I do not wish to obstruct any course he may think fit to take. But I must say that if these Sections are simply omitted, the result will be almost inextricable confusion. As he himself appears to anticipate, the English law of marriage in its application to property will survive, since we have practically confined the operation of the Code to the European community. Now, as I before explained, one of the principal objects of the new law is, to efface the distinction between Real and Personal property, to substitute that between Moveables and Immoveables, and to provide simple rules of testamentary disposition and of intestate succession uniform for property of

either kind. But the English Law of Property as affected by marriage, has essentially for its basis the distinction between Realty and Personalty. It has been correctly described by my Hon'ble friend. It gives the husband all his wife's personalty, it confers on him certain limited rights over her realty, over debts due to her and over what are called her chattels real. On the other hand, the wife acquires a right to dower out of her husband's lands. I speak of course of the law of marriage as unaffected by marriage-settlement, or by the provisions of any Will of the person from whom the property has devolved. What then will be the effect? Wills and marriage-settlements are *in pari materia*. Succession after death is just as often determined by one as by the other. Every Will, therefore, made under this Code will be governed by one set of principles: every marriage-settlement will be made under another. There will be entanglement between the two, and so far from having increased the simplicity of the law, we shall have added greatly to its complexity. If the amendment is carried, the first form of the last Section must be restored, and the Code will only come into operation after the Chapter on the Law of Persons shall have been passed. But as the Commissioners will almost certainly take that up last in order, the Code, when it is enacted, will have ceased to have practical interest for anybody now in India.

I have no doubt, however, that my Hon'ble friend has proposed his amendments with a view of raising the question of principle which he has very ably argued. He has stated, though with more moderation, the views expressed by Mr. Justice Seton-Karr, in a minute on this Section, which he has forwarded to the Council. To put these objections in a clear light, I will cite a part of Mr. Seton-Karr's animadversions.

'It involves a fundamental change in the conditions of married existence, which seems to me wholly uncalled for; likely to create feuds or to increase them; at variance with a principle well known, popularly accepted, and long established in England; subversive of the harmony and well-being of the closest social intercourse; opposed to the wholesome relation in which the woman stands to the man; destructive of mutual dependance and honour, and a mere concession to the levelling spirit of the present age, presented under the guise of a questionable liberality.'

Sir, I trust I shall not occupy much of the Council's time in showing that the Indian Law Commissioners are not open to these grave charges. Whether I shall present the justification which the Commissioners themselves would give I really cannot say. For I suppose that the last criticism on their Code they would expect would be this. How little these gentlemen, who are not more learned than respectable, can be prepared for the charge that they are intending disturbers of domestic peace, may be inferred from the fact to which my Hon'ble friend has adverted, but without bringing out its full significance, that this Section simply embodies the provisions which are inserted as a matter of course into every well-drawn English Settlement when the property of the lady is brought under it. I venture to say that every lawyer practised in conveyancing—our friend the Secretary to the Council for example—would insert it without a second thought if he had no express instructions to the contrary, or rather he would prescribe a more stringent rule, as my Hon'ble friend seems himself to be aware, though I do not comprehend the argumentative use to which he has put his knowledge of the fact. There is a certain magical formula of English law "to her sole and separate use" which wherever it is found has the exact effect of this Section. But it is usual to take a further step to which, as it seems, my Hon'ble friend must object, *à fortiori*, and to deprive the wife of the power of anticipation so that not only has she the controul of her property, but is unable to divest herself of it in favour of her husband or of anybody else. The Law Commissioners therefore appear to me to have followed what is the soundest of all rules in amending legislation. They find the nominal law one way, the actual practice another. They know by experience that the nominal law is altogether over-ridden by inveterate usage. Thereupon they have taken the usage and made it into the law. Sir, it seems to me that the argument of my Hon'ble friend and of these learned Judges, Mr. Justice Seton-Karr and Mr. Justice Campbell, lead inevitably to the conclusion, which surely, with all respect, I may venture to call absurd, that in every household in England afflicted with the calamity of a fortune devolving on a wife from her parents, dissension and suspicion must reign, and a generally immoral state of relations be established. Mr. Justice Campbell observes that he has become alive to the mischievousness of this Section from sad experience of the evil effects of a similar rule among the ladies in the zenanas of the Shía Muhammadans in Oude. I venture to think that the experience of English gentlewomen is more germane to the purpose, and I say that the averment that to give them a share in the controul of the property they have inherited impairs their sense of conjugal duty is calumnious. I do not indeed mean to say that it is calumnious in the mouth of my Hon'ble friend or of these learned Judges. I attribute a feeling, which to me is perfectly unintelligible, to a small circumstance peculiar to India, which is not unimportant. Members of the Services in India marry generally under the provisions of their funds, which, in fact, are ready-made marriage-settlements. As, then, these Funds are formed by retrenchments from the earnings of the husband, a marriage-settlement in India is most frequently a provision made exclusively by the husband. But a marriage-settlement in England is just as often a settlement of the wife's fortune, and I say that the general sense of equity and fairness prevailing among Englishmen would be severely shocked if there were not reserved to the wife a controul over her property, or, at all events, the free exercise of her volition in giving it away. And so strong is this feeling that the property-holding classes have given the benefit of their own practice to the poor, and some recent enactments have been passed to protect the personal earnings of a wife against the Common Law rights of her husband.

Sir, the first reason which I should expect the Commissioners to give in justification of this Section is this, that by it in an eminent degree they have attained to simplicity. It is no doubt possible for the law-giver to regulate by express legislation the law of property as affected by the status of marriage—to select some system of proprietary relations between husband and wife as in itself the best and most expedient—and yet to construct a tolerably simple body of jurisprudence. But such simplicity can be secured on one condition, which is quite indispensable. It is this—that after choosing your ideally perfect set of relations, you adhere to it, and abide by it—that by express prohibitions you forbid any but the most

inconsiderable departure from it. It is, as it seems to me, an inadequate appreciation of this truth which deprives of value my Hon'ble friend's citations from foreign bodies of law. The French Codes, which are doubtless the most liberal of all, and which are destined to absorb almost all the others, provide, as any Hon'ble friend has correctly stated, three alternative forms of marriage-settlement, and ordain that if none in particular be adopted by the persons marrying, one special settlement shall prevail. But, then, under French law no marriage-settlement is allowed to affect succession after death. Every contract of the kind is subject to the inflexible rules which compel the absolutely equal division of the property among the children. Moreover, the enjoyment of the property by the married persons during their joint lives can only be varied from the provisions of these three ready-made settlements in a very slight degree. Some deviation through what are called "auxiliary facts"—"collateral articles" as we probably should call them—is permitted, but such deviation is not considerable. Speaking roughly, it may be said that two persons intending to marry under French law are confined to a choice among three forms of marriage-settlement, and can only affect their own life-interests.

Compared, then, with the almost unlimited liberty of making settlements which is permitted by English law, the French system is one of the severest restriction. I suppose, then, the Law Commissioners to have reasoned in this way. "We offer no opinion as to the abstract expediency of the proprietary independence of husband and wife. We are ready to admit, that in particular cases, it may be desirable to give the husband a larger control over his wife's fortune. But we are unable to reconcile any legislation founded on this admission with that unbounded liberty of moulding settlements to the position of the persons and of the property which the English law has long permitted, which the English people have long practised, and which we intend to confer on the people of India. Granting the unshackled freedom of making settlements, we think that the proprietary independence of man and wife is the best point to start from. For it is found by the experience, the consentaneous experience of English lawyers, that if you insert a series of provisions in a law, but permit them to be overruled at the pleasure or caprice of individuals, you make an absolute sacrifice of simplicity. For the immediate result is this :—every line and perhaps every word of every marriage-settlement will have to be framed with an express or tacit reference to the antecedent provisions of the Code. The object is to exclude those antecedent provisions and to substitute others. But this can only be done by a person who has those provisions in his mind and their legal consequences also. The effect will therefore be to defeat one of the principal objects of this legislation, which is to dispense with the absolute necessity of employing professional lawyers in drawing Wills and Marriage-settlements. Probably under no system of law will it ever be quite safe to dispense with professional assistance. But if this Code be not tampered with, it will ensure, as far as is possible, that the intentions of a testator or settler expressed in plain and untechnical language shall have effect." The Commissioners, therefore, secure by this Section, the great legal advantage of simplicity. But let me ask, on their behalf do they sacrifice morality? Really, Sir, the feeling of my Hon'ble friend, and of the two learned Judges, appears to me utterly inexplicable. They seem to regard it as almost sinful in the law-giver to decline to express a preference for one particular system of proprietary relations between husband and wife, and Mr. Justice Campbell claims the most solemn sanctions for some arrangement which is not clearly explained, but which, at all events, is not that of the Code. But neither my Hon'ble friend nor Mr. Campbell seems to have the smallest objection to allowing their typical system to be overridden by the first comer. If, then, the system of the Law Commissioners be sinful, I say that the system of my Hon'ble friend and Mr. Campbell is sacrilegious. If a particular state of the law of property is sanctified at the altar, to allow it to be set aside is to profane the altar. Sir, the English marriage service still contains the ancient formula by which the Church in the Dark Ages constrained the husband to promise that he would give his wife after his death her dower and thirds, a promise which has given its form to the Common-Law of nearly all Europe. It usually happens that the marriage-settlement, signed a day or two before the ceremony, makes the wife covenant to renounce her dower and thirds. Now, if the meaning of the promise were generally understood, which it certainly is not, does my Hon'ble friend think that it adds solemnity to the occasion, or that it might not be omitted with advantage? I think that there is something like indecency even in a secular Legislature to set up provisions which will certainly be knocked down by everybody like men of straw. But if these provisions have the sanctity which is now claimed for them, there is something worse than indecency.

Another justification which perhaps the Commissioners would offer is that the Section, except in very rare cases, will only have effect when it has been deliberately intended that it should have effect. I asserted once before that there is no practice which diffuses itself so rapidly as the practice of making Wills and Marriage-settlements, and under the simple forms permitted by this Code, the chances are that it extends itself more widely in India than in England. But if by some accident—and it will only occur through an accident—property should devolve from her relatives on a wife during marriage in such a way that this Section operates upon it, I cannot for a moment admit that there is the smallest objection to requiring the wife's consent before this property is dealt with by her husband. The learned Judges do not seem to me fully to comprehend what my Hon'ble friend has shown that he understands, though it does not help his argument, that this Section does not forbid the wife to divest herself of that control over her property which it secures to her. There will be nothing to prevent her re-settling it the next moment to her husband's advantage. There have been systems of jurisprudence, which, like the Roman law, made it their deliberate policy to keep apart the property of husband and wife. But then the Roman law went on by its prohibition of donations *inter virum et uxorem* to forbid one married partner to alienate his or her property in favour of the other. An English marriage-settlement when strictly drawn has the same effect as regards gifts from the wife to the husband. But this Section puts no obstacle in the way of an immediate re-settlement. What conceivable objection can there be to requiring the

wife's consent to it? If that state of relations follow which in the great majority of cases does follow, it would certainly be asked, and that household must be miserably ordered in which the intelligent assent of the wife to an advantageous disposition of the property is not asked, and given as a matter of course. But assume the contrary—assume that the wife capriciously and maliciously, and to the detriment of the common interest, refuses her consent. Does my Hon'ble friend, who has the peace of families at heart, suppose that he would mend matters by allowing the husband violently to take away that which he has not earned or given? Since the beginning of the world, or at all events since the War of Troy, no great amount of good feeling, so far as I know, was ever created by allowing one person to take away by force what belongs to another. Nothing can be clearer, in short, than the probable operation of the Section. In the great majority of cases, the law will correspond with that which, apart from law, would exist in fact. In the few exceptional instances, no good would be done by attempting legislation.

But, Sir, for myself I must admit in all honesty that, according to my individual judgment, it would be better if it were even commoner than it is to give the wife a controul over her own property, and if that controul were more sustained and continued. I wonder that my Hon'ble friend has not learned the same lesson which I have learned from our discussions on this Code. Why is it that after exempting Hindús and Muhammadans from its operation we have been led successively to except nearly every Native race in India? The reason is the same throughout—the insurmountable distaste which all feel for anything like an equality of privileges between the sexes. Some will allow the woman to have nothing: they say that she should be supported by her parents when she is unmarried; that her husband should maintain her when she is married; and that after his death, since the British Government permits her to live, she should be at the charge of her children or relatives. Others go a step further, and admit that the woman has a right to a share of the patrimonial property. But they affirm that it is an indeterminate share, determinable by her needs or by the sense of equity prevailing in the family. If I had no data to go upon, other than those which these discussions supplied, I should be led to the conclusion which I have arrived at independently, that if there exists any test of the degree in which a society approximates to that condition which we call civilization, it is the degree in which it approaches the admission of an equality of right between the sexes. In this country I am sure that by simply applying that criterion you could construct a scale of barbarism and civilization which would commend itself to every man's perceptions. My Hon'ble friend Mr. Anderson must forgive me for saying, that perhaps the last struggle of barbarism—I do not use the word offensively, but as a term of degree—occurs in the case of his excellent clients the Parsees, who are ahead of the other races in allowing to women a definite share of property and in permitting them to enjoy it independently, but who seem to consider it a sin against nature if daughters were to take more than a fourth as much as their brothers. I once had a conversation with a very able Native Member of Council on some project of law, and I observed to him that if his view were correct, there would be no difference between wifehood and slavery. "Well," said he, "but that is the very doctrine from which we take our start." Now of course the views of my Hon'ble friend and the two learned Judges are very remote from this—they are very near the other end of the scale. But the question is, whether they are wholly unallied with it? I have always observed that prejudice, when driven to its last stronghold, generally clothes itself in language of a certain vague magnificence; and I cannot help suspecting that something of the doctrine of my Native friend lurks in the generalities of my Hon'ble friend and the learned Judges about the ideal type of the family.

Sir, I think we may claim, not for English Law, but for English Lawyers, the discovery that in order to settle satisfactorily the relations of married life, it is sufficient to rely on the personal obligations of the married couple. You compel them to live together, you settle their rights over their children, you regulate their power of binding one another by contract: their dealings with one another's property you leave them to settle in the way which seems best to them; and if bad is the best, you believe that by minute legislation you cannot make it better.

The Hon'ble Mr. Cowie said that, without giving his adherence to the whole tenor of the Hon'ble Mr. Muir's argument, he had intended to vote for his amendment on the primâ facie ground that it would be expedient to defer the consideration of so important a question until that portion of the Civil Code which treated of marriage and its effect upon property should come before the Council. But the Hon'ble Mr. Maine had shown so clearly the inexpediency of this; in fact, had named it as equal to postponing the question for years, that he (Mr. Cowie) was compelled to vote against the amendment.

The Hon'ble Mr. Muir—"Sir, I have paused before replying, because I had hoped that some other Members of the Council would have spoken at length upon the important question at issue between my Hon'ble friend and myself.

Sir, I do not perceive that there are many points in my Hon'ble friend's speech which call for any reply.

I must repeat my assertion that the subject has not received anything like adequate attention from the public Press. The article to which my Hon'ble friend alludes must have preceded the introduction of the Bill some considerable time; for since it has been before the Council, I do not recollect to have seen in the papers a single discussion on the subject. The silence has been complete and ominous.

My Hon'ble friend, it appears to me, has admitted that an ordinary marriage-settlement differs in its effect from the proposed law, inasmuch as it binds the property settled securely to the wife; and that suffices for the completeness of my argument.

My Hon'ble friend has failed to remove the important practical difficulties which I raised respecting the unlimited responsibility of the husband for his wife's debts, although the controul over her property is taken from him. Nor has he noticed the appeal which I addressed to him to inform the Council of the probable course which the marriage law will take in this respect. I submit that he has left us as much in the dark as we were before.

Referring to his comments on the restrictions of the French and other continental systems, it will suffice to say that there seems no reason why we should not borrow from them those parts which are good, without adopting unnecessary restrictions not essential to the doctrine of community.

My Hon'ble friend has well remarked that the English practice of marriage-settlements belong to a period of society the most forward and advanced in the world,—a state of society which can perhaps safely dispense with some of those family restrictions indispensable in an earlier stage of civilization. But I have shown that this Code, as the *lex loci* of India, will embrace indigenous tribes, mixed races, and masses of Native Christians, who belong altogether to a backward stage, unprepared for the great advances of modern society, with whom, at any rate, it is of the last importance to maintain the integrity of the family and the authority of the husband as its head.

If my Hon'ble friend will not consent to omit these Sections from the Bill, I would urge upon him whether it would not be proper and right to postpone the passing of the whole Bill for several months, in order that the subject may be further discussed. However valuable this Bill, no material inconvenience will arise from its postponement. We can afford to get on for a time without it, as we have already. There is no such urgent necessity for it as to demand the hurried and precipitate passing of so important an alteration as that now before the Council, an alteration, the end and full bearing of which are still involved in obscurity."

The Hon'ble MR. TAYLOR said that it must be recollected that a large portion of the Council had been Members of the Select Committee and had taken the opposite view to his Hon'ble friend.

The Hon'ble MR. MUIR said that, as his motion had failed to secure any support in the Council, he saw no advantage in pressing it to a division. He therefore asked permission of His Excellency the President for its withdrawal.

The amendment was then by leave withdrawn.

The Hon'ble MR. HARINGTON said, it having been determined, and as he thought rightly, that Section 43 should stand as part of the Bill, he would now move that the Section be restored to the part of the Bill where it had originally stood, and from which he thought its removal had been proposed by the Select Committee without sufficient reason. The Section was declaratory in its character, and was intended to controul, or to operate in respect to, the entire Bill. This being the case, he considered that the Commissioners had rightly placed the Section at the commencement of the enacting part of the Bill. His motion, which was made with the knowledge, and he hoped he might add with the concurrence, of the Hon'ble Member in charge of the Bill, was that Section 43 stand as Section 4 of the Bill, and that the numbers of the intervening Sections and of the present Section 4 be altered accordingly.

The Hon'ble MR. MAINE said that the Section had been removed from its original place to its present place in order to bring it in contiguity with Section 44. He had had considerable doubts as to the proper place of the section; but, on the whole, he felt inclined to acquiesce in his Hon'ble friend's motion, especially because the Law Commissioners had placed it in the position to which Mr. Harington wished to restore it.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON said that he would now further move that the last Section of the Bill (332) be struck out, and the following Section substituted for it:—

"The Governor General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect, or tribe in British India, or any part of such race, sect, or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order. The Governor General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect. All orders and revocations made under this Section shall be published in the *Gazette of India*."

He thought that the Section proposed by him, without altering the principle of the Section as it stood, would bring out more clearly the intentions of its framers.

The Hon'ble MR. MAINE said that he consented to the amendment with pleasure. The Section proposed by Mr. Harington not only empowered the Governor General in Council to exempt any race, tribe, or sect in British India, but also every part of such race, tribe, or sect. If necessary, therefore, it would be possible to exempt Native Christians from the operation of the Act.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Indian Civil Code, Chapter I, as amended, be passed.

The Hon'ble MR. MUIR moved, as an amendment that, under Rule 29 of the Standing Orders, the Bill as amended in Council be republished, and its consideration deferred for a fortnight. Even within that short period, there would be some opportunity for ascertaining the opinion of the public on the Section which he had opposed.

The Hon'ble MR. MAINE said he saw no necessity for the proposed postponement.

The amendment was negatived.

The original motion was then put and agreed to, and the Bill passed accordingly.

STAMP ACT AMENDMENT BILL.

The Hon'ble MR. HARINGTON, in moving for leave to introduce a Bill to amend Act X of 1862 *(to consolidate and amend the Law relating to Stamp Duties)*, said that the part of the Stamp Act which the present Bill proposed to amend was the thirty-third Section. By that Section the Governor General of India in Council was empowered to reduce the rate of Stamp Duty on all or any of the deeds, instruments and writings described in the schedules at the end of the Act, or altogether to exempt them from Stamp Duty. It might have been supposed that the Section, as framed, was sufficiently large and comprehensive to enable the Government of India to do all that was necessary and proper in the direction of the Section, and to meet every case in which a reduction of Stamp Duty might be deemed just or reasonable; but experience had shown that the wording of the Section was too restrictive, and that the power given by it required to be enlarged. An application had recently been made to the Government of India to reduce the Stamp Duty chargeable on bonds which were taken under the Indian Customs' Act of 1863. These bonds were at present liable to the same Stamp Duty as all other bonds or obligations for the payment of money. Compared with England, the amount of Stamp Duty on bonds in this country was very

high, and as levied on the class of bonds just mentioned, it was found to press heavily upon trade, and particularly upon the bonders of salt cargoes. Looking to the circumstances under which these bonds were taken, and to the fact that actions to enforce them were very rare, the Government were disposed to view favourably the proposition that had been made for the reduction of the rate of Stamp Duty to which they were now liable, and to follow to some extent the English practice in respect of such bonds; but they were advised that, although they had power to lower the rate of Stamp Duty on bonds generally in the whole or any part of British India, they had not power to reduce the rate of Stamp Duty on any particular class of bonds. The object of the Bill which he had asked leave to introduce was to invest the Government with that power as regarded not only bonds, but also all other deeds, instruments and writings liable to Stamp Duty. It seemed right that the Government of India should have the enlarged powers proposed by the Bill, and in giving them, he thought it might be assumed that the Council would not be acting contrary to the intention of the framers of the existing Stamp Law.

The Motion was put and agreed to.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 3rd March 1865.

Government of Bengal.

Working of the Grant-in-aid System in Bengal.

From the HON'BLE A. EDEN, Secy. to Govt. of Bengal, to Offg. Secy. to Govt. of India, Home Dept.,—No. 6182, dated 31st December 1864.

I am directed to acknowledge the receipt of the orders of the Government of India No. 582, dated 23rd May last, and in reply to forward copy of a letter No. 2771, dated the 31st August last, from the Director of Public Instruction, on the working of the Grant-in-aid system in Bengal, with the following observations of the Lieutenant Governor, for the consideration of His Excellency the Governor General in Council.

Education.

2. The Deputation of the Church Missionary Society appear to urge the following objections to the system of Grants-in-aid as administered in this country:—

1*st*.—That it has failed to give a "stimulus to the exertions of voluntary and independent parties."

2*nd*.—That the action of independent parties is crippled rather than encouraged by the Rules under which the grants are administered by the Local Governments, and that the promoters of Schools are deterred from accepting the benefit of the grants by the various, minute, and complicated requirements of Government.

3*rd*.—That in consequence of these hinderances to the development of the system, "there is a prospect of the whole of the education of India, within a small fraction, devolving upon the resources of Government," and it is insinuated that the expenditure of the Government upon its own Schools was rapidly increasing, and that thus the object of the Despatch of 1854 was being defeated.

3. Mr. Atkinson's letter is, in the Lieutenant Governor's opinion, a complete refutation of the statements of the Church Missionary Society, so far as they relate to the Lower Provinces of the Bengal Presidency, and a masterly defence of the existing and recently amended Grant-in aid Rules, which, in point of simplicity and fairness, as well as adaptation to the wants and circumstances of the country, seem to be scarcely susceptible at present of further improvement.

4. Whilst the direct expenditure of Government on its own educational institutions has been nearly stationary, the increase on Grants-in-aid of private institutions has been most remarkable. Indeed, the fear is not that the demand for Grants-in-aid will be checked by the hinderances imposed by the Rules, but that the demand will far exceed the expectations of Government, and become such a heavy charge upon the State revenues that, in the course of a few years, more stringent conditions will have to be imposed. The expenditure on purely Government institutions has only increased some £1,600 during the last four years; the Grants-in-aid have increased from £9,775 in 1859-60 to £22,958 on the 30th April 1864. In the face of these figures, it is quite incomprehensible that the Church Missionary Society should have any such apprehensions regarding the failure of the system as they profess to have in their letter of the 27th November 1863. The progress of the Grant-in-aid system seems to the Lieutenant Governor to have been as satisfactory as anything possibly could be; and any rate of progress in excess of that which has taken place would, His Honor thinks, warrant considerable apprehension of the overgrowth of the system. The Missionary Societies moreover have less cause to complain of stringent and complicated requirements than any other bodies; the Rules have been relaxed in their favor on several occasions, and every consideration consistent with the main principle of Grants-in-aid has been shown to them.

5. The complaints of the Church Missionary Society are so vague and general as to render specific reply impossible, and, in the absence of some definite statement of their grievances, it is difficult to surmise what impediments and complicated requirements they allude to. If they had ground of complaint in any particular instances, their representations would have received, as they have always done, the earnest consideration of the Lieutenant Governor.

6. In regard to paragraph 6 of the Secretary of State's Despatch, the Lieutenant Governor observes that, exclusive of Schools under other Christian bodies, there are 145 Schools under Missionary Societies, receiving annual grants aggregating £4,868.

7. In respect to their proposal that more liberal grants should be given to independent Schools, the Lieutenant Governor thinks that the Director of Public Instruction shows very clearly that no such change is required, and would indeed be highly inexpedient.

8. The Lieutenant Governor is quite convinced that a system of grants by capitation allowances or results is wholly inapplicable to this country, and to the machinery at the disposal of Government for conducting examinations. It would be expensive, and in practice would prove to be in every

way unsatisfactory. Its introduction would inevitably result in heart-burning, discontent, and charges of unfair treatment of particular Schools. It would, moreover, have a directly opposite effect on the grants to Missionary Schools to that which the Society appear to anticipate.

9. The establishment of training institutions, which forms the third recommendation of the Deputation, has already received the earnest attention of Government. There have been for some little time past fourteen Training Schools in the Lower Provinces, and their number has just been increased by the establishment of four new Training Schools at Purneah, Behar, Sarun, and Bhaugulpore. The excellent working of the experimental system of Vernacular Training Schools under Baboo Bhoodeb Mookerjee has already been brought to the notice of the Secretary of State, and has received his approval.

10. His Honor desires me to take this opportunity of drawing the special attention of the Government of India, as well as of Her Majesty's Secretary of State, to the 17th paragraph of Mr. Atkinson's letter, which contains, as the Lieutenant Governor conceives, a true exposition of the main principle by which the Government of India ought to be guided in its efforts to educate the people of India, or, at any rate, the people of Bengal. The education of the people at large, not of a particular class, is the object which all, Government as well as Missionaries, have in view, and the question simply is whether this object can best be accomplished,—

(1.) By the direct agency of Government, or of Missionary bodies occupying, relatively to the Natives in respect to education, the position of the Government; or

(2.) By the agency of the people themselves, supplemented by such assistance as the resources of the State or the Funds of Missionary bodies can afford.

To this question, the Lieutenant Governor thinks there can be but one answer. It is obvious, indeed, that neither the resources of the State, whether they be administered through the Officers of an organized Department, or through the means of Missionary Agents, can suffice or nearly suffice even for the partial accomplishment of this great work, and that for the education of the masses, the main dependence must be, both for the work itself, and for the means of carrying it out, on the Natives themselves.

11. While, therefore, by giving Grants-in-aid on liberal, simple, and intelligible principles towards the establishment of Schools of all grades, Government rightly encourages every visible desire on the part of Natives to obtain education for their children; while, with equal propriety, it affords to Missionary bodies the means of pursuing a similar course; and while it establishes Normal Schools for the training of qualified Teachers, its main reliance must continue to be, as it has heretofore been, on its English Colleges and Zillah Schools, in which young men, chiefly of the higher classes, are educated up to a high standard, and are not only qualified for employment in the higher offices of the Public Service, and in the various professions and occupations which demand a comparatively high standard of intellectual acquirements, but become capable also of creating by their example and influence a general thirst after useful knowledge, and are willing, as experience shows, to take an active part in imparting it to their countrymen.

12. With this view, the Lieutenant Governor, while embracing every opportunity of placing the means of education within the reach of the lower classes, through the instrumentality of Vernacular and Anglo-Vernacular Schools, partly supported by funds raised either by religious and benevolent associations, or by private individuals, feels assured that, for a long time to come at all events, the maintenance of the Government Schools and Colleges is the great instrument to which Government must trust for the spread of education in Bengal.

From W. S. ATKINSON, Esq., Director of Public Instruction, to Secy. to Govt. of Bengal,—No. 2771, dated Darjeeling; the 31st August 1864.

I have the honor to acknowledge the receipt of your endorsement No. 1114 T, dated 28th June, forwarding for report a resolution of the Government of India, in the Home Department, with papers annexed, on the subject of the administration of Grants-in-aid in India.

2. The Despatch of Her Majesty's Secretary of State, on which the resolution of the India Government is founded, had its origin in suggestions offered by the governing body of the London Church Missionary Society, as embodied in a letter addressed to Sir Charles Wood, under date 27th November 1863, which is appended to his Despatch. In this letter the Society complains that the Grant-in-aid system in this country has failed, and that the failure is mainly attributable to the rules under which it has been worked. In Bengal, it is said, "various, minute, and complicated requirements are attached to Grants-in-aid which deter many Schools from accepting the benefit," and it is further remarked as objectionable that "no distinction is made between the scale of grants to the higher grades of Schools in large towns where local resources abound, and to Vernacular and Village Schools which are wholly dependent on external aid."

3. Now, with regard to this last objection, I have only to reply that the state of things complained of does not now, and never did, exist. It is true that the old rules made no express provision for graduating grants with reference to the status of the Schools applying, but it is no less a fact that the amounts sanctioned have always been determined with reference to such considerations under the general provisions set forth in paragraph 1, which declared that "the Local Government, at its discretion, and upon such conditions as may seem fit in each case (reference being had to the requirements of each District as compared with others and to the funds at the disposal of Government), will grant aid." Paragraph 6 declared that no grant would "in any case exceed in amount the sum expended on the Institution from private sources," thereby fixing the maximum amount which Government was prepared to sanction with reference to local expenditure, but leaving the actual amount to be determined, as it always has been in practice, with reference to the circumstances of each particular case. In Calcutta indeed it was long ago ruled that no grants should be given at all to English Schools of the higher class, inasmuch as it was known that such Schools were there not only self-supporting, but yielded considerable profits. It will be seen, therefore, that the Society is mistaken on this point

as regards the operation of the old rules, whilst in the new rules the principle of graduation, which they advocate, has been specifically adopted.

4. It is more difficult to dispose of the allegation regarding the obstruction said to be caused by "minute and complicated requirements" attached to grants. No instances are given, and it is impossible to say what is really complained of. If the requirements objected to are to be looked for in the rules, I should suppose that they must be those relating to fees and to inspection by Government Officers.

5. As regards fees, the rates charged in Missionary Schools are generally very considerably lower than those levied in other Schools of the same class, whether under the control of Government or of Native Managers, and when they apply for aid, there is always a struggle to keep the fees at the lowest point possible, besides which a demand is frequently made to be allowed to retain a free list. The reason is, that hardly any Native will send his children to a Missionary School if he can afford to send them to a good secular School of the same class. The Missionaries, therefore, feel that they can only compete with other Managers by offering their wares at cheaper rates. The plea is always allowed to a certain extent, but it is so important to train the people to feel the value of education and to make sacrifices for the attainment of it, that even if it were just to make large allowances to Missionaries which are refused to Native Managers, I should not think it expedient to concede what is often asked in this respect; for, in the case of Mission Schools, fee payments are all that is required from the people who profit by them. There are no subscriptions, and the people are allowed to take no part in the management,—so that the valuable lessons of self-reliance and self-government which the system teaches in its application to Schools of Native origin are here almost entirely wanting. A free list is often asked for by Native Managers as well as Missionaries, but it is always refused as liable to grave abuse. Applicants are told that they are at liberty to pay the fees of any or all of the students from such private funds as they can dispose of for the purpose, but that such payments must not be made from the funds of the School. There is probably hardly a School in which there are not pupils who are paid for by the charity of their neighbours; and in some cases, where the Projector of the School is a man of wealth, the fees of every student are defrayed out of his private purse. No objection is made to such arrangements, but I am satisfied that the principle we have adopted is the right one, *viz.*, to fix the rates of fees at reasonable amounts with reference to the standard of instruction, the locality, and the amount of the Government Grant, and to insist that the fee of the class shall be paid by or for every pupil whose name is on the Register. Without the latter provision, it would probably soon be found that the free list would in many cases be filled with the children or relatives of the School Managers.

6. With regard to inspection there is still much diversity of opinion among different bodies of Missionaries. Some entertain strong objections to any kind of supervision, and are particularly averse to the rule which subjects the books and accounts of Aided Schools to the inspection of a Government Officer. It has been urged that this rule is derogatory to the dignity of a Missionary, and puts dishonor on "a Minister of the Gospel," because it implies a doubt of his honesty. It is hardly necessary to combat this objection, but I shall simply state that experience has shown that this sort of supervision is quite as necessary in the case of Mission Schools as it is in the case of Schools under Native Managers. The Church Missionary Society has never urged this objection, and none of its Agents object to inspection by Christian Officers, but some of the Missionaries employed by it, in common with many connected with other bodies, object to their Schools being visited by the Native Deputy Inspectors. This feeling is not, however, universal. One well-known Missionary of the Church Missionary Society near Calcutta has always courted the visits of the Native Deputy Inspector in whose District his Schools are situated; and some time ago, on the occasion of my visiting Cherra Poonjee, the head of the Welsh Presbyterian Mission made a particular request to me that I would appoint a Native Officer of this class for the District, as the best assistance he could have in supervising the Schools under his management. I may add that very recently when Dr. Duff applied for and obtained Grants-in-aid for a system of Schools established by him near Calcutta, he admitted to me the necessity of subjecting these Schools, in common with others of the same class in the neighbourhood, to the inspection of the Native Officer of the District. When the Grant-in-aid system was first brought into operation, many Mission Schools were exempted from this sort of supervision in deference to the urgent remonstrances of the applicants, but the result, as far as those Schools themselves are concerned, has not been satisfactory, while the privilege conceded to them, if privilege it can be called, has naturally excited the jealousy of the Natives and given cause for a charge of partiality in favor of alien bodies, which is mischievous in proportion as it is well founded.

7. I have mentioned, I believe, all the objections that have been generally raised on the score of inspection. It is hardly necessary to advert to other points of minor importance connected with it—such as objections to the forms of Bills and Returns required; or to other points which, though of serious importance, have only been taken up by individual objectors—such as the prohibition which forbids Inspectors to examine the scholars in religious subjects. As regards the former class of objections, no remarks are called for; and as regards the latter, I shall simply say that I should regard any relaxation of the prohibition referred to as a serious calamity.

8. Amongst objections of a different character that have been urged against the existing rules, it may be well to advert to that which relates to the provision against the substitution of public for private expenditure. It is difficult at first sight to see the ground of this objection, for the provision is obviously sound in principle and in strict accordance with the axiom on which the Grant-in-aid system is founded, *viz.*, that people should be assisted in proportion as they are willing to assist themselves. The religious bodies are, however, consistently bent on obtaining the greatest possible control over the education of the people; and hence, as their funds are limited, they are naturally anxious, after their own resources are exhausted, to get into their hands the money of the State to be expended in accordance with their own particular views. Now I certainly see no

reason why this should be allowed. The great object of the Grant-in-aid system was to stimulate *Native* effort, and to call forth the private resources of communities in aid of such funds as the State can properly spare for the education of the people. In these respects it must certainly be admitted that it is now succeeding admirably in the Provinces under His Honor's Government. It raises annually for the purpose of education very large and steadily increasing sums by means of voluntary assessment, and it is teaching the people most valuable lessons in self-help and self-government. In the case of Missionary Schools these advantages are altogether wanting. The people contribute nothing in the form of subscriptions, and the fees they are called upon to pay are almost always, as I have already stated, much lower than in other Schools of the same class, whether under Native Managers or under the direct control of Government. Moreover, the people are allowed no voice whatever in the management of the Schools, these being controlled directly by the nearest resident Missionary, under the general orders of some Central Committee in Calcutta or elsewhere. Apart, therefore, from the value of the religious instruction conveyed in them, with which the Government has no concern, the only advantage possessed by Missionary Schools over those under Native management arises from the European supervision which those of them enjoy which are maintained in the same Station with a resident Missionary. Those at a distance from him are in no better but rather in a worse position than the Native Schools which have a School Committee resident on the spot. I do not underrate the value of the superior attainments and moral influence which the Missionary brings to bear on the Schools under his immediate eye—but against this is to be set the loss of the incentives to exertion and of the training to the performance of public duties, which are conspicuous advantages in the case of Schools established and maintained by the people themselves. I hold, therefore, that there would be no gain, but the contrary, in any change of system which had for its object to enable Missionary bodies to set up new Schools at no expense to themselves or to the people who are to benefit by them. If Schools are to be maintained at the public cost, there is no reason why they should be confided to the management of Missionary Committees. They can be established more cheaply, and would be maintained more effectively by the direct agency of this Department.

9. To a certain extent, however, the object which the religious bodies have in view is favored by the alteration in the rules which allows fees to count as income in respect of which Grants-in-aid are sanctioned. In many cases they will be able, if they choose, to establish Schools and retain them under their own management by means of the funds derived from the Government Grant and the schooling fees alone, without the necessity of drawing a Rupee from their private purse. I apprehend, therefore, that less will in future be said in condemnation of the clause which declares that private expenditure shall not be relieved at the expense of the State.

10. I am not aware of any other Missionary objection to the Bengal rules which calls for remark, but it is necessary to draw attention to the extraordinary statement put forth in the 9th paragraph of the Society's letter, which quotes figures in proof of the assertion that the anticipations of the Despatch of 1854 have been defeated, and that instead of the Grant-in-aid principle being allowed to assume a prominent place in the educational system, there is on the contrary "a prospect of the whole of the education of India, within a small fraction, devolving upon the resources of Government."

In support of this assertion it is stated that, "according to the last Returns, while £18,414 was granted in aid of independent Schools, £2,64,870 was spent upon Government education" throughout the whole of India.

It is not stated what are "the last Returns" referred to; but as I find in a Missionary pamphlet on the subject the same figures given for the amount of aid to independent Schools in the year 1861-62, it may be assumed that the writers of the letter supposed they were quoting from the statistics of that year. I shall show that the Returns of this Department throw extreme doubt on the accuracy of their quotation, and that, so far at least as regards the Lower Provinces of Bengal, the inference deduced from it is in no common degree erroneous.

11. I have carefully gone through the Returns of the actual amounts disbursed by Government, during each of the four years ending 30th April 1863, on account of its own Institutions for general education, and on account of private Institutions for the same purposes to which it is a contributor. The result is exhibited in the following table:—

Statement showing the amounts disbursed by the State on account of Government and Private Institutions for general education.

Years.	Government Institutions.			Private Institutions.	
		£	£		£
1859-60 ...	Colleges	11,684			
	Schools	24,030			
			35,714	Schools ...	9,775
1860-61 ...	Colleges	11 951			
	Schools	24.354			
			36,305	Ditto ...	9,821
1861-62 ...	Colleges	12.084			
	Schools	24,292			
			36,376	Ditto ...	12,284
1862-63 ...	Colleges	11,914			
	Schools	25,410			
			37,324	Ditto ...	16,598

To prevent misapprehension, I may explain that the expenditure on direction and inspection is here excluded, as is also the large grant for English and Vernacular Scholarships, since in these Provinces every scholarship is open alike and on the same terms to the pupils of Government and private Institutions without exception. The Professional Colleges and Schools for Law, Medicine, and Civil Engineering, are also excluded, as they are obviously not terms in the comparison.

12. Now this table shows that during the year referred to by the Society, the allowances to private Institutions in Bengal alone amounted to £12,284 against £36,376 devoted to Government Institutions. In other words, more than one-fourth of the entire expenditure upon direct instruction of a general character was employed in support of private Institutions, whereas the figures quoted by the Society are meant to imply that less than one-fourteenth part of the Government expenditure was so distributed.

But the table further shows how rapidly the proportion is now altering in favor of independent Institutions. In 1860-61 the percentage was 27·0; in 1861-62 it was 33·7; and in 1862-63 it had risen to 44·4.

13. The Accountant-General's Department has not yet furnished me with the Statement of the Receipts and Disbursements of 1863-64, but it is quite certain that the percentage for that year has been at least equally progressive. On the 30th April last the *sanctioned annual allowances* to private Institutions (exclusive of the considerable sum spent in improving indigenous Schools) amounted to £22,958, as shown in the annexed Statement, against £15,668 on the same date of the preceding year:—

Statement showing the distribution of Government Allowances to Private Institutions, as sanctioned on 30th April 1864.

Institutions receiving Aid.	Number of Schools.		Annual Grant.	
Under the Grant-in-aid Rules.			£	£
Under Missionary bodies	67		3,668	
„ other Christian bodies	8		1,410	
„ Native Managers	574		15,356	
		649		20,434
Under other Rules.				
Under Missionary bodies	78*		1,200	
„ other Christian bodies	2		1,324	
		80		2,524
Total		729		22,958

14. An analysis of this Statement, as regards the distribution of allowances under the Grant-in-aid Rules, will, I think, prove incontestably that the Missionary bodies have no right to be dissatisfied with the share assigned to them out of the Grant-in-aid Fund; for it appears that, while the number of their Schools is less than 12 per cent. of the number under Native Managers, the annual grant sanctioned for them amounts to very nearly 24 per cent. of the amount assigned to the latter. It is true that the sixty-seven Missionary Schools contained proportionally more scholars than the 574 Schools under Native Managers,—the actual numbers being 4,745 in the former and 28,937 in the latter,—but taking these figures for the comparison, it still results that while Missionary Schools receive nearly 24 per cent. of the money assigned to Native Managers, they are not engaged in instructing more than 16½ per cent of the number of pupils in Schools of the other class.

15. Nor can it be said that this disparity is compensated by the superior attainments of the scholars in Mission Schools. They are not only not superior but are actually vastly inferior, as I shall show by a comparison of the results obtained at the two great Annual Examinations at which all Schools compete on equal terms, *viz.*, the University Entrance Examination, in respect of which Government Junior Scholarships (English) are awarded, and the Vernacular Scholarship Examination conducted by the Divisional Inspectors of Schools. The Returns show that at the last award the Aided Mission Schools gained three English Scholarships, but not one Vernacular Scholarship;† while the other Aided Schools gained seventeen English Scholarships and 192 Vernacular Scholarships. From this it results that the average proficiency of the best scholars in Aided Mission Schools reaches no higher than 1·5 per cent. of the proficiency in Aided Schools of the other class; this enormous disparity being due to the fact that the standard of secular instruction is fixed, as a rule, at a much lower point in Schools conducted by Missionaries than in Schools conducted by Native gentlemen.

16. I confidently trust that I have now succeeded in showing to the satisfaction of Government, that, as far as regards the Lower Provinces of Bengal, the alleged failure of the Grant-in-aid system is not a fact; but that the system is on the contrary making rapid progress, and that, too, in the direction where progress is most important, *viz.*, among the Native subjects of Her Majesty for

* This number is approximate only. The Schools are those maintained amongst the Koles, Sonthals, Khasias, and other uncivilized tribes.

† The Scholarships gained by them in the three years preceding were—

	English.	*Vernacular.*
1861...	... 4	0
1862...	... 3	0
1863...	... 3	0

whose especial benefit the scheme was originally framed.

17. It would be out of place on the present occasion to discuss at any length the causes which have led to this success, but I cannot refrain from pointing out that we have here the direct and natural result of the policy which has governed the administration of education in these Provinces for the last quarter of a century, in accordance with which a large number of first class Institutions (Colleges and Schools) have been established throughout the country by Government, in which a sound and liberal education has been provided for the upper and middle classes of the people. These classes have largely availed themselves of the boon thus offered, and the fruits are now appearing in the desire and determination which they are manifesting to aid in imparting to others the advantages which they have reaped themselves, and of which actual experience has taught them the inestimable value. We invariably find that it is under the shadow of our great Schools and Colleges, and owing to their direct influence, that private Schools spring up in the greatest numbers and meet with most success; and I regard it as beyond all question that the increase of these latter, and the future condition of such of them as are already in existence, will continue to depend on the maintenance and improved efficiency of the superior Government Institutions, which are the models after which all other Institutions established with the same object are invariably fashioned. If this policy is persisted in, so marked has now become the desire of the people to avail themselves of the advantages which the present aid rules afford, that I am satisfied the increase of Schools under the provisions therein contained is much more likely to be checked by the inability of Government to supply the funds required than by any failure in the popular demand.

18. I now proceed to remark on the suggestions put forward in the 10th paragraph of the Society's letter. The first of these suggestions proposes generally that more liberal grants should be given to private Schools than have hitherto been sanctioned. After what has been advanced above, it is not necessary to say more on this point than that increased liberality on the part of Government is quite unnecessary as far as Bengal is concerned. Already, in not a few cases, private Schools receiving aid under the operation of the rules till recently in force are actually more costly to Government, scholar for scholar, than its own corresponding Institutions of the same class (which are also more efficient), although the latter are commonly spoken of as *supported entirely by Government*, while the former are only said to be *aided*. Her Majesty's Secretary of State remarks that it was anticipated that, under the Grant-in-aid system, "education might be more widely spread with a comparatively less expenditure of public money." This, I apprehend, must still be regarded as the economical end to be kept in view in framing measures for the administration of the system, and if it be so, there can be no question but that the scale by which grants are fixed under the existing rules is to the full as liberal as the Government can properly concede, or as the circumstances of the country require.

19. The second suggestion recommends that "Schools should be allowed the option of receiving aid according to the Revised Code in England by capitation allowances upon results ascertained by Government Examinations." On this point the Secretary of State remarks that he is not satisfied that this system is as applicable in India as it is in England, and I have no hesitation in asserting that it is not applicable in Bengal.

20. In the first place it would involve of necessity a vastly increased expenditure on account of inspection. Valuable and indispensable as are the Native Deputy Inspectors, it certainly would not be advisable to entrust them with the assessment of the amount of aid to be assigned to the various Schools within their District. It is not that I should fear in most cases intentional partiality. As a rule, I believe, they would honestly endeavour to be fair in their decision; but I have not altogether the same dependence on the correctness of their judgment; and it is quite certain that they would not in such a matter enjoy the implicit confidence of their own countrymen, and still less of the Missionary bodies with whom they must be brought in contact; yet, under the proposed system, it would be absolutely necessary either to entrust them with a power which they could not exercise to the satisfaction of the public, or else to supersede them in a measure and multiply three or four-fold the highly paid European Inspectors, of whom at present we have no more than five, for a country larger than France, with a population of 40,000,000.

21. I believe that even under the present system some increase to their number may shortly become necessary, but I would confine this increase within the narrowest limits, and would frame our measures in such a way that they may be worked to the greatest extent possible by Native Agency. This is unquestionably, in my opinion, our true policy, for it is only under this condition that education can ever spread widely, or take root deeply without an extravagant expenditure of the public resources of the State.

22. To show how impossible it would be for the Divisional Inspectors under present arrangements to take upon themselves the duty of assigning grants by capitation allowances, depending on the attainments of the scholars or even on the general condition of the Schools, it will be enough to state that the two senior Inspectors have at the present time under their charge 408 and 559 Schools, respectively, and that the average area of each Inspector's jurisdiction is about 36,000 square miles, a territory considerably larger than the whole of Ireland.* For England and Wales, on the other hand, there are no less than sixty School Inspectors, with small and compact Districts under their charge, and the Returns for last year show that on the average each Inspector visited no more than 191 Schools or Departments of Schools, which are probably equivalent to less than 150 separate Institutions.

23. But, again, supposing that this difficulty were overcome and the number of Inspectors were augmented to any extent that might be necessary, it must be remembered this even when the Inspectors are highly educated English gentlemen, much dissatisfaction will still inevitably arise from the new relations that would subsist between these Officers and the School Managers. The grants would depend solely and absolutely on the reports of the Inspector after each of his periodical visits, when he must be brought into direct personal contact with the Missionaries or Native Committees

* The area of Ireland is 32,508 square miles.

and the Masters. There would be probably hardly a School that would not feel itself more or less aggrieved by his award; and instead of being regarded as a friend and received, as now, with a ready welcome, he would come to be looked upon as a disagreeable inquisitor, and a hard and disparaging task Master. The duty would in fact be a most invidious one, and no Inspector would willingly undertake it.

24. There are, however, other reasons which make the principle of the Revised English Code unsuitable for Bengal. In England the Schools aided by the State are all designed for the lower classes, and in none of them does the standard of instruction differ materially either in the same District or in distant parts of the country. A simple scale of allowances can, therefore, be framed and worked without material difficulty. In Bengal, on the contrary, the Institutions receiving aid are of every possible class, ranging from Colleges affiliated to the University, which educate students up to the standard of the M. A. Degree, down to primary village Schools, in which the simple elements of reading, writing, and arithmetic are taught by Gooroos whose remuneration is not more than 15 shillings a month. Between these two extremes there are Schools of every conceivable grade; so that a system of paying for results would require the arrangement of a most complicated scale of allowances even in the same District, while this scale must again vary indefinitely for Schools of the same class in different parts of the country, since rates that would be suitable for the most forward Districts would be utterly unsuited to other Districts in different stages of advancement.

25. The uncertainty which such a system must occasion as to the available income of a School, and the consequent insecurity of the Masters' salaries, is another argument against this change to which considerable weight must be attached. Even under the present system, where the income of an Aided School is comparatively fixed and certain, appointments in Government Schools are eagerly sought by Masters who would require salaries from 25 to 50 per cent. higher in Aided Schools; and it appears certain that appointments in these Schools would be still further depreciated by a change which would make the salaries depend in great measure on the daily attendance of the scholars, over which the Masters have in reality but little control. In Mission Schools, indeed, this uncertainty would tell with vastly greater force than in Schools of any other class, inasmuch as they are subject to far greater fluctuations in the number of their scholars. In their case, if a conversion takes place, the School is at once emptied, and perhaps remains closed for months, and an imaginary offence against caste will often produce a secession hardly less disastrous. On this ground alone, therefore, it seems surprising that a capitation system should be looked on with favor by the governing body of the Church Missionary Society.

26. It must not, moreover, be lost sight of in considering the probable results of the change proposed that under a capitation system the temptation to falsify the Registers, which even now exists to some extent, must be enormously intensified, and would become, it may be feared, in many cases irresistible.

27. The Church Missionary Society proposes that the adoption of the system of the Revised Code should be left to the option of the School Managers. Now, I need hardly point out that, if a choice is thus allowed, every single School will adopt the new system, if the scale of allowances is so arranged that they would find themselves pecuniary gainers by the change. The rates must, therefore, be fixed in such a way that the average payments by the State are not enhanced, supposing every School to claim its grant on the capitation system; since, as I have already stated, it is neither necessary nor desirable that the public contributions should be on a more liberal scale than they are at present. To adjust the balance between the proposed arrangement and that at present in force, would be a task of considerable difficulty, and after all, I believe, it would be found in practice that a double standard could not be maintained.

28. It is certain, however, that after an equitable adjustment of the scales, the immediate effect of the adoption of the new system by the Missionary Schools would be to diminish very largely the amount of the grants now allotted to them. The statistics already given furnish the following comparative statement of work done and money received by Schools under Native Managers and Schools under Missionary bodies:—

Aided Schools.	Relative Work done.		Relative cost to Government.
	Scholars taught.	Proficiency.	
Under Native Managers ...	100	100	100
Under Missionary bodies ...	6·5 1	1·5	23·8

From this it appears that the aggregate of the grants to Schools of all classes remaining the same, the Missionary bodies would, under a capitation system, depending solely on attendance, receive no more than 16*s.* 6*d.* where they now receive 23*s.* 9½*d.*, and that, as far as the evidence of the present competitive Examinations afford a test, they would receive no more than 1*s.* 6*d.* instead of 23*s.* 9½*d.*, if the grants were made to depend solely on the proficiency of the scholars. It may safely be assumed, therefore, that if an option were given, and the rates are properly adjusted, the Missionary bodies at least would certainly not elect to receive grants assessed according to the out-turn of their Schools.

29. Where the conditions are the same, the principle of graduating payments according to result is no doubt within certain limits a sound one; but for the reasons above stated, and for others of less importance which need not here be specified, I am convinced that the introduction into these Provinces of the principle of the Revised Code of the Privy Council or of any modification of it, would not only be no improvement on the arrangements now in force, but would lead to exceedingly inconvenient consequences, and prove a decided check on the development of the Grant-in-aid system, which, as has already been shown, is here making most satisfactory progress.

30. The remaining suggestion of the Society relates to the encouragement to be afforded to the establishment of Normal Training Schools. Under the present rules such Institutions can obtain grants equal in amount to the income guaranteed from private sources, and fee payments are not required from the students. These terms I consider sufficiently liberal. On the application of the Church Missionary Society, a grant has been very recently sanctioned on these conditions for a Training School at Kishnaghur, and there will be no objection to assigning grants on like terms to a moderate number of similar Institutions. Such Schools are, however, specially designed for Native Christians, and but few of them can therefore be required for Lower Bengal.

Fourteen Government Training Schools are now sanctioned for the Districts comprised within His Honor's jurisdiction. These are of course purely secular Institutions, and are open to all classes without restriction. They must, therefore, be much more generally useful than Institutions conducted by religious bodies, and therefore mainly confined to a particular creed. Their number will soon, I trust, be considerably augmented, so that full provision may be made for promoting improved education among the masses of the people.

Printed and Published for the Government of India, by O. T. CUTTER, *at the Military Orphan Press.*

No. 11.

The Gazette of India.

Published by Authority.

CALCUTTA, SATURDAY, MARCH 18, 1865.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 7th March 1865, and is hereby promulgated for general information:—

ACT No. IX OF 1865.

An Act to amend Act No. XVI of 1864 (*to provide for the Registration of Assurances.*)

Preamble.

Whereas it is expedient to amend Act No. XVI of 1864 (*to provide for the Registration of Assurances*); It is enacted as follows:—

Addition to tenth Section of Act XVI of 1864.

1. The second sentence of the tenth Section of Act No. XVI of 1864 shall be read as if the words "or any other person whom the Registrar General may think proper to appoint" were inserted after the words "Civil jurisdiction of the District."

Addition to thirteenth Section of said Act.

2. The thirteenth Section of the said Act shall be read as if the following proviso formed part thereof: Provided also that the provisions of this Section shall not apply to any instrument relating to shares in a Joint Stock Company notwithstanding that the assets of such Company shall consist in whole or in part of immoveable property.

Act XVI of 1864, Section 25 repealed.

3. The twenty-fifth Section of Act No. XVI of 1864 is hereby repealed.

Registration of instruments affecting immoveable property situate in more than one District.

4. Every instrument affecting immoveable property situate in more Districts than one may be presented for registration to the District Registrar of any District in which any part of the property is situate, and it shall be the duty of such Registrar to register the instrument and to forward a copy thereof endorsed with an attestation stating the date on which it was registered and its number in his Register Book to the District Registrar of every District in which any other part of such property is situate, as well as to the Deputy Registrars subordinate to himself within the limits of whose jurisdiction any part of the property is situate. The District Registrar on receiving the copy shall forward a copy of the same and of the endorsement on the instrument to the Deputy Registrars subordinate to him within the limits of whose jurisdiction any part of the property is situate. Every District Registrar and Deputy Registrar receiving such copy as above shall register the same in the same manner as if the instrument had been presented to him in the first instance for registration.

Recognition of powers of attorney executed by persons absent from India without exact observance of provisions of Section 28 of Act XVI of 1864.

5. Every power of attorney not duly executed or attested in compliance with the terms of the twenty-eighth Section of Act XVI of 1864 shall, at any time within three months after the passing of this Act (but not afterwards), be deemed to be a power duly executed and attested within the meaning of the same Section, if the Registrar General, or in his absence the Deputy Registrar General, after making such enquiry as he shall think fit, shall have certified upon such power of attorney that he is satisfied with the execution thereof, and that, in his opinion, it should be taken as a power duly executed and attested as aforesaid: Provided that this Section shall not apply to any case in which the person who executed the power of attorney shall be still in India.

Act XVI of 1864, Sec. 40, repealed.

6. The fortieth Section of Act No. XVI of 1864 is hereby repealed.

Abstracts of instruments affecting immoveable property registered by Deputy Registrars to be forwarded through District Registrars to General Register Office.

7. An abstract of every original instrument affecting immoveable property registered in the Office of any Deputy Registrar shall, with an endorsement shewing the date on which it was registered and its number in the Register Book of such Deputy Registrar, be forwarded in duplicate within seven days from such date,

to the District Registrar, who shall forthwith forward one of such duplicates to the General Register Office, and shall retain the other in his own Office, and enter it in a Book corresponding with the Book No. 1, 2, 3, or 4 as described in the fifty-sixth Section of the said Act XVI of 1864.

Appointment of Deputy Registrar General to perform duties of Registrar General under Sections 26 and 27 of Act XVI of 1864 during his absence on duty.

8. During the absence on duty of the Registrar General from the place where the General Register Office is established, it shall be lawful for him to appoint the District Registrar of such place, or, with the sanction of the local Government such other person as he shall think fit, to perform the duties of the Registrar General under the twenty-sixth and twenty-seventh Sections of the said Act. A District Registrar so appointed as aforesaid shall perform such duties in addition to his own duties as District Registrar. During such absence as aforesaid, such District Registrar or other person so appointed as aforesaid shall be styled the Deputy Registrar General, and may, in registering any instrument under the said twenty-sixth Section, use the Seal of the Registrar General.

This Act to be construed with Act XVI of 1864.

9. This Act shall be read and taken as part of the said Act No. XVI of 1864.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept., (Legislative.)

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 16th March 1865, and is hereby promulgated for general information :—

Act No. X of 1865.

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

Preamble.

Whereas it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India ; It is enacted as follows :—

PART I.

Preliminary.

Short Title.

1. This Act may be cited as "The Indian Succession Act, 1865."

This Act to constitute the law of British India in cases of Intestate or Testamentary Succession.

2. Except as provided by this Act or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of Intestate or Testamentary Succession.

Interpretation Clause.

3. In this Act, unless there be something repugnant in the subject or context.—

"Number." "Gender."

Words importing the singular number include the plural : words importign the plural number include the singular ; and words importing the male sexinclude females.

"Person."

"Person" includes any Company or Association, or body of persons, whether incorporated or not.

"Year." "Month."

"Year" and "month" respectively mean a year and month reckoned according to the British Calendar.

"Immoveable property."

"Immoveable property" includes land, incorporeal tenements and things attached to the earth, or permanently fastened to anything which is attached to the earth.

"Moveable property."

"Moveable property" means property of every description except immoveable property.

"Province."

"Province" includes any division of British India having a Court of the last resort.

"British India."

"British India" means the territories which are or may become vested in Her Majesty or her successors by the Statute 21 and 22 Vic., Cap. 106, other than the Settlement of Prince of Wales' Island, Singapore, and Malacca.

"District Judge."

"District Judge" means the Judge of a principal Civil Court of original jurisdiction.

"Minor." "Minority."

"Minor" means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person.

"Will."

"Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death.

"Codicil."

"Codicil" means an instrument made in relation to a Will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the Will.

"Probate."

"Probate" means the copy of a Will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator.

"Executor."

"Executor" means a person to whom the execution of the last Will of a deceased person is, by the testator's appointment, confided.

"Administrator."

"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor.

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer Executive Government in such part; and "High Court" shall mean the highest Civil Court of Appeal therein.

"Local Government."

"High Court."

4. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried.

Interests and powers not acquired nor lost by marriage.

Part II.

Of Domicile.

5. Succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death. Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Law regulating succession to a deceased person's immoveable and moveable property, respectively.

Illustrations.

(*a*.) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(*b*.) A, an Englishman having his domicile in France, dies in British India, and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

6. A person can only have one domicile for the purpose of succession to his moveable property.

One domicile only affects succession to moveables.

7. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled: or, if he is a posthumous child in the country in which his father was domiciled at the time of the father's death.

Domicile of origin of person of legitimate birth.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Domicile of origin of illegitimate child.

9. The domicile of origin prevails until a new domicile has been acquired.

Continuance of domicile of origin.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Acquisition of new domicile.

Explanation.—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's Civil or Military Service, or in the exercise of any profession or calling.

Illustrations.

(*a*) A, whose domicile of origin is in England, proceeds to British India, where he settles as a Barrister or a Merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(*b*) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(*c*) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(*d*) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(*e*) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(*f*) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(*g*) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

11. Any person may acquire a domicile in British India by making and depositing in some Office in British India (to be fixed by the Local Government), a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

Special mode of acquiring domicile in British India.

Domicile not acquired by residence in a country merely as the representative of a foreign Government, or by residence with him as part of his family or as a servant.

12. A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Continuance of new domicile.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

Minor's domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile acquired by a woman on marriage.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domicile during marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Except in cases stated, minor cannot acquire a new domicile.

17. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

Lunatic's acquisition of new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Succession to a person's moveable property in British India, in absence of proof of his domicile elsewhere.

19. If a man dies leaving moveable property in British India; in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

PART III.

Of Consanguinity.

Kindred or consanguinity.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

Lineal consanguinity.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line. Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Collateral consanguinity.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

Persons held for purpose of succession to be similarly related to the deceased.

23. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother; nor between those who are related to him by the full blood, and those who are related to him by the half blood; nor between those who were actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

Mode of computing degrees of kindre

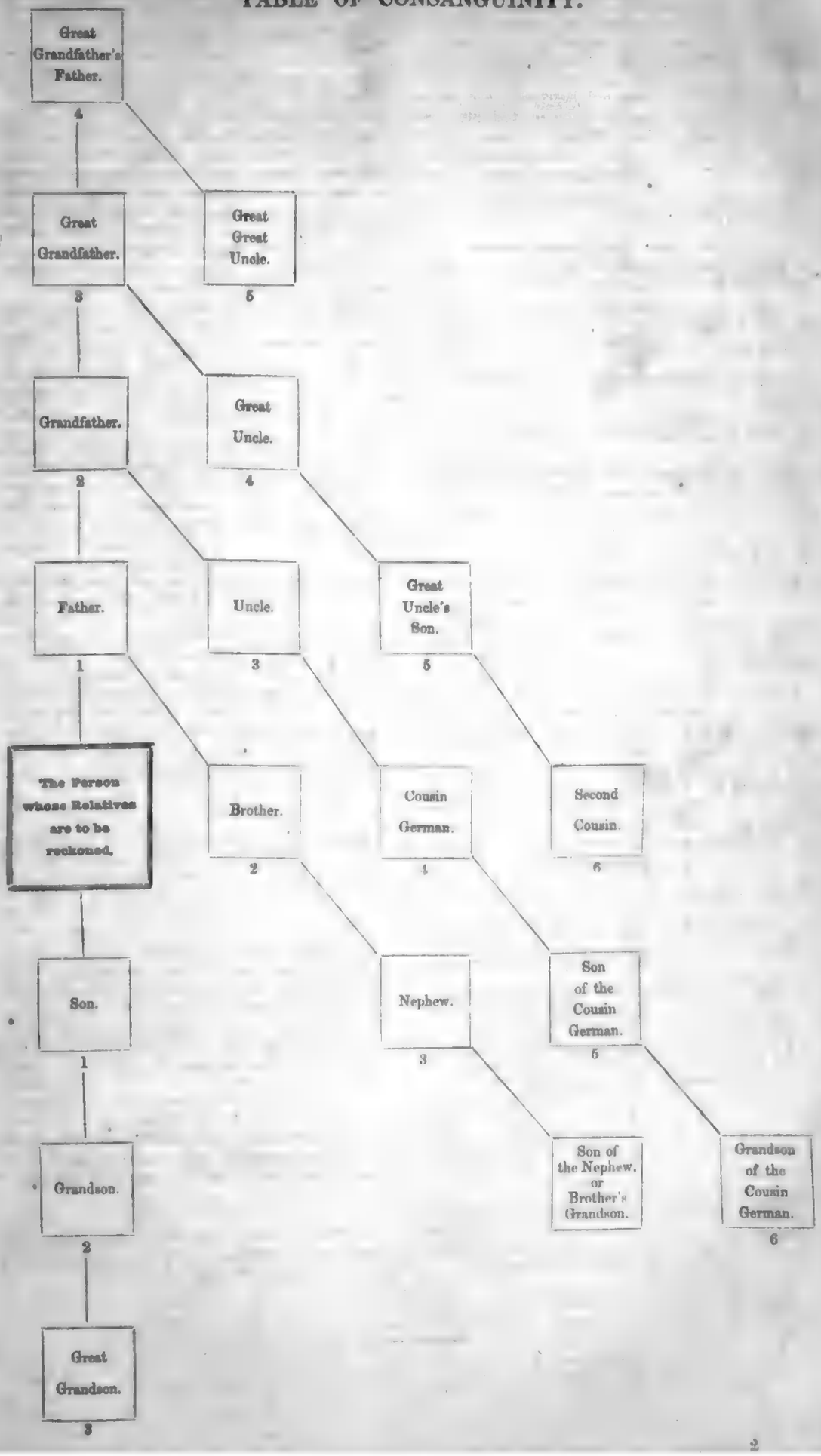
24. In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i. e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great uncle, for they are both in the sixth degree of kindred.

TABLE OF CONSANGUINITY.



PART IV.

Of Intestacy.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

As to what property a deceased person is considered to have died intestate.

Illustrations.

(*a.*) A has left no Will. He has died intestate in respect of the whole of his property.

(*b.*) A has left a Will, whereby he has appointed B his executor; but the Will contains no other provisions. A has died intestate in respect of the distribution of his property.

(*c.*) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(*d.*) A has bequeathed 1,000*l* to B, and 1,000*l* to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000*l* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l*.

26. Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Devolution of such property.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband's estate.

27. Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained. If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained. If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

Where the intestate has left a widow and lineal descendants, or a widow and kindred only, or a widow and no kindred.

28. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained: and if he has left none who are of kindred to him, it shall go to the Crown.

Where the intestate has left no widow, and where he has left no kindred.

PART V.

Of the Distribution of an Intestate's Property.

(*a*) *Where he has left lineal descendants.*

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follows:—

Rules of distribution.

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

Where the intestate has left a child or children only.

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

Where the intestate has left no child, but a grandchild or grand-children.

Illustrations.

(*a*) A has three children, and no more; John, Mary, and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(*b*) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(*c*) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

32. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

Where the intestate has left only great grandchildren or lineal descendants in a remoter degree.

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Where the intestate leaves lineal descendants not all in the same degree of kindred to him, and those through whom the more remote descend are dead.

Illustrations.

(*a*) A had three children, John, Mary, and Henry; John died, leaving four children, and Mary died, leaving one; and Henry alone survived the father. On the death of A intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(*b*) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great-grandchildren.

(*c*) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(*b*) *Where the Intestate has left no lineal descendants.*

Rules of distribution where the intestate has left no lineal descendants.

34. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:—

Where intestate's father is living.

35. If the intestate's father be living, he shall succeed to the property.

Where intestate's father is dead, but his mother, brothers and sisters are living.

36. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Illustration.

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half blood, takes one-fourth.

Where intestate's father is dead and his mother, a brother or sister, and children of any deceased brother or sister are living.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's life-time are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A the intestate leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half blood, who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

Where intestate's father is dead and his mother and the children of any deceased brother or sister are living.

38. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the share which their respective parents would have taken if living at the intestate's death.

Illustration.

A the intestate leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

Where intestate's father is dead, but his mother is living and there is no brother nor sister nor nephew.

39. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

Where intestate has left neither lineal descendant nor father nor mother.

40. Where the intestate has left neither lineal descendant nor father nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the share which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant, nor parent, nor brother nor sister.

41. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Illustrations.

(*a*) A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(*b*) A, the intestate, has left a great-grandfather or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*c*) A, the intestate, left a great-grandfather, an uncle, and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*d*) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

Children's advancements not to be brought into hotch-pot.

42. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child of such person, no money or other property which the intestate may during his life have paid, given, or settled to or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

PART VI.

Of the Effect of Marriage and Marriage Settlements on Property.

Rights of widower and widow respectively.

43. The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

44. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

No rights to property not comprised in an antenuptial settlement, acquired by marriage between a person domiciled and a person not domiciled in British India.

45. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or if he be dead or absent from British India, with the approbation of the High Court.

Settlement of minor's property in contemplation of marriage.

PART VII.

Of Wills and Codicils.

46. Every person of sound mind and not a minor may dispose of his property by Will.

Persons capable of making Wills.

Explanation 1.—A married woman may dispose by Will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a Will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a Will during an interval in which he is of sound mind.

Explanation 4.—No person can make a Will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(*a*) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his Will. A cannot make a valid Will.

(*b*) A executes an instrument purporting to be his Will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid Will.

(*c*) A being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes his Will. This is a valid Will.

47. A father whatever his age may be, may by Will appoint a guardian or guardians for his child during minority.

Testamentary guardian.

48. A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Will obtained by fraud, coercion or importunity.

Illustrations.

(*a*) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a Will in his, A's favour; such Will has been obtained by fraud, and is invalid.

(*b*) A by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(*c*) A, being a prisoner by lawful authority, makes his Will. The Will is not invalid by reason of the imprisonment.

(*d*) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(*e*) A being of sufficient intellect, if undisturbed by the influence of others, to make a Will, yet being so much under the control of B that he is not a free agent, makes a Will dictated by B. It appears that he would not have executed the Will but for fear of B. The Will is invalid.

(*f*) A being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a Will of a certain purport, and does so merely to purchase peace, and in submission to B. The Will is invalid.

(*g*) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a Will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his Will in the manner recommended by B. The Will is not rendered invalid by the intercession and persuasion of B.

(*h*) A with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his Will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

49. A Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will.

Will may be revoked or altered.

PART VIII.

Of the Execution of unprivileged Wills.

50. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his Will according to the following rules:—

Execution of unprivileged Wills.

First.—The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator or the signature of the person signing for him shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

Third.—The Will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the Will, or have seen some other person sign the Will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

51. If a testator, in a Will or Codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the Will or Codicil in which it is referred to.

Incorporation of papers by reference.

PART IX.

Of Privileged Wills.

Privileged Will.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a Will made as is mentioned in the fifty-third Section. Such Wills are called privileged Wills.

Illustrations.

(*a*) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged Will.

(*b*) A is at sea in a merchant ship, of which he is the purser. He is a mariner, and being at sea can make a privileged Will.

(*c*) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged Will.

(*d*) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged Will.

(*e*) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged Will.

(*f*) A, a mariner serving on a Military expedition, but not being at sea, is considered as a soldier, and can make a privileged Will.

Mode of making, and rules for executing, privileged Wills.

53. Privileged Wills may be in writing, or may be made by word of mouth. The execution of them shall be governed by the following rules :—

First.—The Will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a Will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his Will, if it be shown that it was written by the testator's directions, or that he recognized it as his Will. If it appear on the face of the instrument, that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his Will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his Will.

Fifth.—If the soldier or mariner shall in the presence of two witnesses have given verbal instructions for the preparation of his Will, and they shall have been reduced into writing in his life-time, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his Will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a Will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A Will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged Will.

PART X.

Of the Attestation, Revocation, Alteration and Revival of Wills.

Effect of gift to attesting witness.

54. A Will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband: but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a Will does not lose his legacy by attesting a Codicil which confirms the Will.

Witness not disqualified by interest or by being executor.

55. No person, by reason of interest in or of his being an executor of a Will, is disqualified as a witness to prove the execution of the Will or to prove the validity or invalidity thereof.

Revocation of Will by testator's marriage.

56. Every Will shall be revoked by the marriage of the maker, except a Will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not in default of such appointment pass to his or her executor, or administrator, or to the person entitled in case of intestacy.

Power of appointment defined.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Revocation of unprivileged Will or Codicil.

57. No unprivileged Will or Codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or Codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

(*a*) A has made an unprivileged Will; afterwards A makes another unprivileged Will which purports to revoke the first. This is a revocation.

(*b*) A has made an unprivileged Will. Afterwards, A being entitled to make a privileged Will, makes a privileged Will, which purports to revoke his unprivileged Will. This is a revocation.

Effect of obliteration, interlineation, or alteration in unprivileged Will.

58. No obliteration, interlineation, or other alteration made in any unprivileged Will after the execution thereof shall have any effect, except so far as the words or meaning of the Will shall have been thereby rendered illegible or undiscernible, unless

such alteration shall be executed in like manner as hereinbefore is required for the execution of the Will; save that the Will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the Will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the Will.

Revocation of privileged Will or Codicil.

59. A privileged Will or Codicil may be revoked by the testator, by an unprivileged Will or Codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged Will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged Will or Codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged Will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged Will.

Revival of unprivileged Will.

60. No unprivileged Will or Codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a Codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any Will or Codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the Will or Codicil.

Extent of revival of Will or Codicil partly revoked and afterwards wholly revoked.

PART XI.

Of the Construction of Wills.

Wording of Will.

61. It is not necessary that any technical words or terms of art shall be used in a Will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

Enquiries to determine questions as to object or subject of Will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a Will, a Court must inquire into every material fact relating to the persons who claim to be interested under such Will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(*a*) A, by his Will, bequeaths 1,000 rupees to his eldest son, or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the Will applies.

(*b*) A by his Will leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(*c*) A, by his Will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or misdescription of object.

63. Where the words used in the Will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect. A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(*a*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(*b*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(*c*) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(*d*) The testator gives his residuary estate to be divided among "his seven children," and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(*e*) The testator having six grandchildren, makes a bequest to "his six grandchildren," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(*f*) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the Will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

Rejection of erroneous particulars in description of subject.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the Will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Illustrations.

(*a*) A bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, but had no marsh lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh lands of the testator lying in L shall pass by the bequest.

(*b*) The testator bequeaths to A "his zamíndárí of Rampore." He had an estate at Rampore, but it was a taluk and not a zamíndárí. The taluk passes by this bequest.

66. If the Will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

When part of description may not be rejected as erroneous.

Explanation.—In judging whether a case falls within the meaning of this Section, any words which would be liable to rejection under the sixty-fifth Section are to be considered as struck out of the Will.

Illustrations.

(*a*) A bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh lands lying in L as were in the occupation of X.

(*b*) A bequeaths to B "his marsh lands lying in L, and in the occupation of X, comprising 1,000 bighás of land." The testator had marsh lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the Will, and such of the testator's marsh lands lying in L, as were in the occupation of X, shall alone pass by the bequest.

67. Where the words of the Will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Extrinsic evidence admissible in case of latent ambiguity.

Illustrations.

(*a*) A man having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the Will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(*b*) A, by his Will, leaves to B "his estate called Sultánpur Khurd." It turns out that he had two estates called Sultánpur Khurd. Evidence is admissible to show which estate was intended.

68. Where there is an ambiguity or deficiency on the face of the Will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

Illustrations.

(*a*) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his Will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the Will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the seventy-sixth Section.

(*b*). A bequeaths 1,000 rupees to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(*c*) A bequeaths to B rupees, or "his estate of ." Evidence is not admissible to show what sum or what estate the testator intended to insert.

69. The meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a Codicil is to be considered as part of the Will.

Meaning of any clause to be collected from entire Will.

Illustrations.

(*a*) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(*b*) Where a testator having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his Will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

70. General words may be understood in a restricted sense where it may be collected from the Will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the Will that the testator meant to use them in such wider sense.

When words may be understood in a restricted sense, and when in a sense wider than usual.

Illustrations.

(*a*) A testator gives to A "his farm in the occupation of B," and to C "all his marsh lands in L." Part of the farm in the occupation of B consists of marsh lands in L, and the testator also has other marsh lands in L. The general words, "all his marsh lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh lands in L.

(*b*) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a shipmate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(*c*) A, by his Will, bequeathed to B all his household furniture, plate, linen, china, books, pictures, and all other goods of whatever kind: and afterwards bequeathed to B a specified part of his property. Under the first bequest B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

Where a clause is open to two constructions, that which has some effect is to be preferred.

72. No part of a Will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

No part of Will to be rejected, if reasonable construction can be put on it.

73. If the same words occur in different parts of the same Will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Interpretation of words repeated in different parts of Will.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Testator's intention to be effectuated as far as possible.

Illustration.

The testator by a Will made on his death-bed bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under the hundred and fifth Section, but it shall take effect so far as regards the gift to C D.

The last of two inconsistent clauses prevails.

75. Where two clauses or gifts in a Will are irreconcileable, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(*a*) The testator by the first clause of his Will leaves his estate of Rámnagar "to A," and by the last clause of his Will leaves it "to B and not to A." B shall have it.

(*b*) If a man at the commencement of his Will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

76. A Will or bequest not expressive of any definite intention is void for uncertainty.

Illustration.

If a testator says—"I bequeath goods to A;" or "I bequeath to A;" or "I leave to A all the goods mentioned in a Schedule," and no Schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,' or the like," without saying how much, this is void.

Words describing subject refer to property answering that description at testator's death.

77. The description contained in a Will, of property the subject of gift, shall, unless a contrary intention appear by the Will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Power of appointment executed by general bequest.

78. Unless a contrary intention shall appear by the Will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power; and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power.

Implied gift to the objects of a power in default of appointment.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint; and the Will does not provide for the event of no appointment being made; if the power given by the Will be not exercised, the property belongs to all the objects of the power in equal shares.

Illustration.

A, by his Will, bequeaths a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

Bequest to "heirs," &c., of a particular person without qualifying terms.

80. Where a bequest is made to the "heirs," or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next of kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations.

(*a*) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(*b*) A bequeaths 10,000 rupees "to B for his life, and after the death of B, to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(*c*) A leaves his property to B; but if B dies before him, to B's next of kin: B dies before A; the property devolves as if it had belonged to B, and he had died intestate leaving assets for the payment of his debts independently of such property.

(*d*) A leaves 10,000 rupees "to B for his life, and after his decease, to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

Bequest to "representatives," &c., of a particular person.

81. Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Illustration.

(*a*) A bequest is made to the "legal representatives of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

Bequest without words of limitation.

82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the Will that only a restricted interest was intended for him.

Bequest in the alternative.

83. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons;—if a contrary intention does not appear by the Will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(*a*) A bequest is made to A or to B. A survives the testator. B takes nothing.

(*b*) A bequest is made to A or to B. A dies after the date of the Will, and before the testator. The legacy goes to B.

(*c*) A bequest is made to A or to B. A is dead at the date of the Will. The legacy goes to B.

(*d*) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(f) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(g) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the Will.

Effect of words describing a class added to a bequest to a person.

Illustrations.

(a) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(b) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(c) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Bequest to a class of persons under a general description only.

86. The word "children" in a Will applies only to lineal descendants in the first degree; the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children," or "grandchildren," are spoken of; the words "nephews" and "nieces" apply only to children of brothers or sisters; the words "cousins" or "first cousins," or "cousins-german" apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of; the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent, of the person whose "first cousins once removed" are spoken of; the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of; the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of. Words expressive of collateral relationship apply alike to relatives of full and of half blood. All words expressive of relationship apply to a child in the womb who is afterwards born alive.

Construction of terms.

87. In the absence of any intimation to the contrary in the Will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or where there is no such legitimate relative, a person who has acquired, at the date of the Will, the reputation of being such relative.

Words expressing relationship denote only legitimate relatives, or failing such, relatives reputed legitimate.

Illustrations.

(a) A, having three children, B, C, and D, of whom B and C are legitimate and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares, to the exclusion of D.

(b) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(c) A, having in his Will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(d) A leaves a legacy to the "children of B." B is dead, and has left none but illegitimate children. All those who had, at the date of the Will, acquired the reputation of being the children of B are objects of the gift.

(e) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had at the date of the Will acquired the reputation of being children of B. After the date of the Will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired at the date of the Will the reputation of being the child of A by the woman designated. B takes the legacy.

(g) A makes a bequest in favour of the child to be born of a woman, who never becomes his wife. The bequest is void.

(h) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

88. Where a Will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the Will to show what he intended, the following rules shall prevail in determining the construction to be put upon the Will:—

Rules of construction where a Will purports to make two bequests to the same person.

First.—If the same specific thing is bequeathed twice to the same legatee in the same Will, or in the Will and again in a Codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same Will or one and the same Codicil purports to make in two places a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same Will, or in the same Codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a Will and the other by a Codicil, or each by a different Codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word Will does not include a Codicil.

Illustrations.

(*a*) A having ten shares, and no more, in the Bank of Bengal, made his Will, which contains near its commencement, the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the Will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(*b*) A having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a Codicil to his Will, and thereby after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(*c*) A, by his Will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same Will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(*d*) A, by his Will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same Will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(*e*) A, by his Will, bequeaths to B 5,000 rupees, and by a Codicil to the Will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(*f*) A, by one Codicil to his Will, bequeaths to B 5,000 rupees, and by another Codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(*g*) A, by his Will, bequeaths "500 rupees to B because she was his nurse," and in another part of the Will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(*h*) A, by his Will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the Will, an annuity of 400 rupees. B is entitled to both legacies.

(*i*) A, by his Will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

Constitution of residuary legatee.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Illustrations.

(*a*) A makes her Will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, &c., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(*b*) A makes his Will, with the following passage at the end of it:—"I believe there will be found sufficient in my "banker's hands to defray and discharge my debts, which I "hereby desire B to do, and keep the residue for her own "use and pleasure." B is constituted the residuary legatee.

(*c*) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

Property to which a residuary legatee is entitled.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

A by his Will bequeaths certain legacies, one of which is void under the hundred and fifth Section, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his Will, A purchases a zamíndárí, which belongs to him at the time of his death. B is entitled to the two legacies and the zamíndárí as part of the residue.

Time of vesting of legacy in general terms.

91. If a legacy be given in general terms, without specifying the time, when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he dies without having received it, it shall pass to his representatives.

In what case a legacy lapses.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the Will that the testator intended that it should go to some other person. In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(*a*) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator; the legacy lapses.

(*b*) A bequest is made to A and his children. A dies before the testator or happens to be dead when the Will is made. The legacy to A and his children lapses.

(*c*) A legacy is given to A, and in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(*d*) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(*e*) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(*f*) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

A legacy does not lapse if one of two joint legatees die before the testator.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

Effect in such a case, of words showing testator's intention that the shares should be distinct.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration.

A sum of money is bequeathed to A, B, and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

When lapsed share goes as undisposed of.

95. Where the share that lapses is a part of the general residue bequeathed by the Will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B, and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any child or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the Will.

When a bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

Illustration.

A makes his Will, by which he bequeaths a sum of money to his son B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his Will whereby he bequeaths all his property to his widow D. The money goes to D.

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Bequest to A for the benefit of B does not lapse by A's death in testator's lifetime.

98. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Survivorship in case of bequest to a described class.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(*a*) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the Will, leaving three children, C, D, and E. E died after the date of the Will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(*b*) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

(*c*) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(*d*) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the life time of A, C having made a Will, E having made no Will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(*e*) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E, and the representatives of C, in equal shares.

(*f*) A bequeaths 1,000 rupees to B for life, and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(*g*) A bequeaths 1,000 rupees to "all the children born or to be born" of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F, and G, to the exclusion of the after-born child of B.

(*h*) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

PART XII.

Of void Bequests.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Bequest to a person by a particular description, who is not in existence at the testator's death.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or if he be dead, to his representatives.

Illustrations.

(*a*) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator B has no son. The bequest is void.

(*b*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death, the legacy goes to C's son.

(*c*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(*d*) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e*) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

100. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the Will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Bequest to a person not in existence at the testator's death, subject to a prior bequest.

Illustrations.

(*a*) Property is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(*b*) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(*c*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life, and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect in the case of each daughter who marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(*d*) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Rule against perpetuity.

Illustrations.

(*a*) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25, may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B, and the minority of the sons of B. The bequest after B's death is void.

(*b*) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(*c*) A fund is bequeathed to A for his life, and after his death to B for his life; with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18; but that if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(*d*) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding Sections, or either of them, such bequest shall be wholly void.

Bequest to a class, some of whom may come under the rules in the Sections 100, 101.

Illustrations.

(*a*) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(*b*) A fund is bequeathed to A for his life, and after his death to B, C, D, and all other the children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease In all other respects the case is the same as that supposed in Illustration (*a*). The mention of B, C, and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

103. Where a bequest is void by reason of any of the rules contained in the three last preceding Sections, any bequest contained in the same Will, and intended to take effect after or upon failure of such prior bequest, is also void.

Bequest to take effect on failure of bequest void under Sections 100, 101, or 102.

Illustrations.

(*a*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son, to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under Section 101. The bequest to B is void.

(*b*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under Section 101. The bequest to B is void.

104. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

Effect of direction for accumulation.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death; and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(*a*) The Will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal together with the accumulations, shall then be divided between A, B, and C. A, B, and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(*b*) The Will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(*c*) The Will directs that the rents of the farm of Sultânpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(*d*) The Will directs that the rents of the farm of Sultânpur shall be accumulated for ten years, and that the accumulations shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(*e*) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the Will, but in consequence of B's minority.

Bequest to religious or charitable uses.

105. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the Wills of living persons.

Illustration.

A having a nephew makes a bequest by a Will not executed nor deposited as required—

For the relief of poor people;
For the maintenance of sick soldiers;
For the erection or support of a hospital;
For the education and perferment of orphans;
For the support of scholars;
For the erection or support of a school;
For the building and repairs of a bridge;
For the making of roads;
For the erection or support of a church;
For the repairs of a church;
For the benefit of ministers of religion;
For the formation or support of a public garden.

All these bequests are void.

PART XIII.

Of the Vesting of Legacies.

Date of vesting of legacy when payment or possession postponed.

106. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the Will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy. And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(*a*) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(*b*) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(*c*) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(*d*) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(*e*) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(*f*) A fund is bequeathed to A, B, and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B, and C, subject to be devested in case A, B, and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

Date of vesting when legacy is contingent upon a specified uncertain event.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens. A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible. In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the Will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit; the bequest of the fund is not contingent.

Illustrations.

(*a*) A legacy is bequeathed to D in case A, B, and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B, and C all die under 18, or one of them attains that age.

(*b*) A sum of money is bequeathed to A "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(*c*) An estate is bequeathed to A for life, and after his death to B, if B shall then be living, but if B shall not be then living, to C. A, B, and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(*d*) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(*e*) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(*f*) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(*g*) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and

after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(*h*) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(*i*) A leaves his farm of Sultânpur Khurd to B, if B shall convey his own farm of Sultânpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(*j*) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(*k*) A fund is bequeathed to A if B shall not make any provision for him by Will. The legacy is contingent until B's death.

(*l*) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(*m*) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

Vesting of interest in a bequest to such members of a class as shall have attained a particular age.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

PART XIV.

Of Onerous Bequests.

Onerous bequest.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Illustration.

A having shares in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

One of two separate and independent bequests to same person may be accepted, and the other refused.

110. Where a Will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration.

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART XV.

Of Contingent Bequests.

Bequest contingent upon a specified uncertain event, no time being mentioned for its occurrence.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the Will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations.

(*a*) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(*b*) A legacy is bequeathed to A, and in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(*c*) A legacy is bequeathed to A when and if he attains the age of 18, and in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(*d*) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children," are to be understood as meaning in case B shall die without children during the lifetime of A.

(*e*) A legacy is bequeathed to A for life, and after his death to B, and "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

Bequest to such of certain persons as shall be surviving at some period not specified.

112. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the Will.

Illustrations.

(*a*) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(*b*) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(*c*) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(*d*) Property is bequeathed to A for life, and after his death to B and C, with a direction that in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

PART XVI.

Of Conditional Bequests.

Bequest upon impossible condition.

113. A bequest upon an impossible condition is void.

Illustrations.

(*a*) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(*b*) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the Will. The bequest is void.

Bequest upon illegal or immoral condition.

114. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Illustrations.

(*a*) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(*b*) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

Fulfilment of condition precedent to the vesting of a legacy.

115. Where a Will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations.

(*a*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(*b*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(*c*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(*d*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(*e*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(*f*) A makes his Will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(*g*) A legacy is bequeathed to A if he executes a certain document within a time specified in the Will. The document is executed by A, within a reasonable time, but not within the time specified in the Will. A has not performed the condition, and is not entitled to receive the legacy.

Bequest to A and, on failure of the prior bequest, to B.

116. Where there is a bequest to one person and a bequest of the same thing to another if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(*a*) A bequeaths a sum of money to his own children surviving him, and if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(*b*) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

Case in which the second bequest shall not take effect on failure of the first.

117. Where the Will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

Illustration.

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

Bequest over, conditional upon the happening or not happening of a specified uncertain event.

118. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or, that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person. In each case the ulterior bequest is subject to the rules contained in Sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

Illustrations.

(*a*) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be devested and to go to B in case A shall die under 18.

(*b*) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a Will, the estate shall go to B. A disputes the competency of the testator to make a Will. The estate goes to B.

(*c*) A sum of money is bequeathed to A for life, and after his death to B, but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be devested if he dies leaving a son in A's lifetime.

(*d*) A sum of money is bequeathed to A and B and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(*e*) A bequeaths to B the interest of a fund for life, and directs the fund to be divided, at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

Condition must be strictly fulfilled.

119. An ulterior bequest of the kind contemplated by the last preceding Section cannot take effect, unless the condition is strictly fulfilled.

Illustrations.

(*a*) A legacy is bequeathed to A, with a proviso that if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(*b*) A legacy is bequeathed to A, with a proviso that if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(*c*) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that if A dies under 18, or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Illustrations.

(*a*) An estate is bequeathed to A for his life, with a condition superadded that if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the Will.

(*b*) An estate is bequeathed to A for her life, and if she do not desert her husband, to B. A is entitled to the estate

during her life as if no condition had been inserted in the Will.

(c) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under Section 92, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen or not happen.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a) An estate is bequeathed to A for his life, with a proviso that in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood; he loses his life interest in the estate.

(b) An estate is bequeathed to A, provided that if he marries under the age of 25 without the consent of the executors named in the Will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c) An estate is bequeathed to A, provided that if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(d) An estate is bequeathed to A, with a proviso that if she becomes a Nun she shall cease to have any interest in the estate. A becomes a Nun. She loses her interest under the Will.

(e) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that if B shall become a Nun, the bequest to her shall cease to have any effect. B becomes a Nun in the lifetime of A. She thereby loses her contingent interest in the fund.

Such condition must not be invalid under Section 107.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh Section.

Result of legatee rendering impossible or indefinitely postponing an act for which no time is specified and on the nonperformance of which the subject-matter is to go over.

123. Where a bequest is made with a condition superadded that unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect; but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

(a) A bequest is made to A with a proviso that unless he enters the army the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b) A bequest is made to A with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

Performance of condition, precedent or subsequent, within specified time.

124. Where the Will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect; the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Further time allowed in case of fraud.

PART XVII.

Of Bequests with Directions as to Application or Enjoyment.

Direction that funds be employed in a particular manner following an absolute bequest of the same to or for the benefit of any person.

125. Where a fund is bequeathed absolutely to or for the benefit of any person, but the Will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the Will had contained no such direction.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to purchase a commission in the Army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

Direction that a mode of enjoyment of absolute bequest is to be restricted, to secure a specified benefit for the legatee.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him, as if the Will had contained no such direction.

Illustrations.

(a) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried, the representatives of each daughter are entitled to her share of the residue.

(b) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

Bequest of a fund for certain purposes, some of which cannot be fulfilled.

127. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the Will, remains a part of the estate of the testator.

Illustrations.

(a) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children; the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their

decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART XVIII.

Of Bequests to an Executor.

128. If a legacy is bequeathed to a person who is named an executor of the Will, he shall not take the legacy unless he proves the Will or otherwise mainfests an intention to act as executor.

Legatee named as executor cannot take unless he shows intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the Will, and dies a few days after the testator, without having proved the Will. A has manifested an intention to act as executor.

PART XIX.

Of Specific Legacies.

129. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Specific legacy defined.

Illustrations.

(*a*) A bequeaths to B—
"The diamond ring presented to him by C."
"His gold chain."
"A certain bale of wool."
"A certain piece of cloth."
"All his household goods, which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death."

"The sum of 1,000 rupees in a certain chest."
"The debt which B owes him."
"All his bills, bonds, and securities belonging to him lying in his lodgings in Calcutta."
"All his furniture in his house in Calcutta."
"All his goods on board a certain ship then lying in the River Hooghly."

"2,000 rupees which he has in the hands of C."
"The money due to him on the bond of D."
"His mortgage on the Rampore Factory."
"One-half of the money owing to him on his mortgage of Rampore Factory."

"1,000 rupees, being part of a debt due to him from C."
"His capital Stock of 1,000*l.* in East India Stock."
"His promissory notes of the Government of India, for 10,000 rupees in their 4 per cent. loan."
"All such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company."

"All the wine which he may have in his cellar at the time of his death."
"Such of his horses as B may select."
"All his shares in the Bank of Bengal."
"All the shares in the Bank of Bengal which he may possess at the time of his death."
"All the money which he has in the 5½ per cent. loan of the Government of India."
"All the Government securities he shall be entitled to at the time of his decease."
Each of these legacies is specific.

(*b*) A having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.
The legacy is specific.

(*c*) A having property at Benares, and also in other places, bequeaths to B all his property at Benares.
The legacy is specific.

(*d*) A bequeaths to B—
His house in Calcutta.
His zamíndárí of Rampore.
His taluk of Rámnagar.
His lease of the Indigo factory of Sulkea.
An annuity of 500 rupees out of the rents of his zamíndárí of W.
A directs his zamíndárí of X to be sold, and the proceeds to be invested for the benefit of B.
Each of these bequests is specific.

(*e*) A by his will charges his zamíndárí of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamíndárí to D. Each of these bequests is specific.

(*f*) A bequeaths a sum of money to buy a house in Calcutta for B.
To buy an estate in Zillah Fureedpore for B.
To buy a diamond ring for B.
To buy a horse for B.
To be invested in shares in the Bank of Bengal for B.
To be invested in Government securities for B.
A bequeaths to B—
"A diamond ring."
"A horse."
"10,000 rupees worth of Government securities."
"An annuity of 500 rupees."
"2,000 rupees, to be paid in cash."
"So much money as will produce 5,000 rupees 4 per cent. Government securities."
These bequests are not specific.

(*g*) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England.
No one of these legacies is specific.

130. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds, or securities in which it is invested are described in the Will.

Bequest of a sum certain where the stocks, &c., in which it is invested are described.

Illustration.

A bequeaths to B—
"10,000 rupees of his funded property."
"10,000 rupees of his property now invested in Shares of the East Indian Railway Company."
"10,000 rupees at present secured by mortgage of Rampore Factory."
No one of these legacies is specific.

131. Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was at the date of his Will possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Bequest of stock where the testator had at the date of his Will an equal or greater amount of stock of the same kind.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had at the date of the Will five per cent. Government securities for 5,000 rupees.
The legacy is not specific.

132. A money legacy is not specific merely because the Will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Bequest of money where it is not to be paid until some part of the testator's property shall have been disposed of in a certain way.

Illustration.

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as A's property in India shall be realized in England.
The legacy is not specific.

When enumerated articles are not to be deemed to be specifically bequeathed.

133. Where a Will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

Retention in form of specific bequest to several persons in succession.

134. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Illustrations.

(*a*) A having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although if B lives for 15 years, C can take nothing under the bequest.

(*b*) A having an annuity during the life of B, bequeaths it to C for his life, and after C's death to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

135. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall in the absence of any direction to the contrary be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the Will.

Illustration.

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's death to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where there is a deficiency of assets to pay legacies, specific legacy not liable to abate with general legacies.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX.

Of Demonstrative Legacies.

Demonstrative legacy defined.

137. Where a testator bequeaths a certain sum of money or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that where specified property is given to the legatee, the legacy is specific; where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(*a*) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(*b*) A bequeaths to B ten bushels of the corn which shall grow in his field of "Greenacre."

"80 chests of the Indigo which shall be made at his factory of Rampore."

"10,000 rupees out of his five per cent. promissory notes of the Government of India."

An annuity of 500 rupees "from his funded property."

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluk of Rámnagar.

A bequeaths to B "10,000 rupees out of his estate at Rámnagar," or charges it on his estate at Rámnagar.

"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

Order of payment when legacy is directed to be paid out of a fund the subject of a specific legacy.

138. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and so far as the residue shall be deficient, out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

PART XXI.

Of Ademption of Legacies.

Ademption explained.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the Will.

Illustrations.

(*a*) A bequeaths to B—

"The diamond ring presented to him by C."

"His gold chain."

"A certain bale of wool."

"A certain piece of cloth."

"All his household goods which shall be in or about his dwelling-house in M Street in Calcutta at the time of his death."

A, in his lifetime,

Sells or gives away the ring.

Converts the chain into a cup.

Converts the wool into cloth.

Makes the cloth into a garment.

Takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(*b*) A bequeaths to B—

"The sum of 1,000 rupees in a certain chest."

"All the horses in his stable."

At the death of A, no money is found in the chest, and no horses in the stable.

The legacies are adeemed.

(*c*) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned.

The legacy is adeemed.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the Will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

Non-ademption of demonstrative legacy.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Ademption of specific bequest of right to receive something from a third party.

Illustrations.

(*a*) A bequeaths to B—
"The debt which C owes him."
"2,000 rupees which he has in the hands of D"
"The money due to him on the bond of E."
"His mortgage on the Rampore Factory."
All these debts are extinguished in A's lifetime, some with and some without his consent.

All the legacies are adeemed.

(*b*) A bequeaths to B—
"His interest in certain policies of life assurance."
A in his lifetime receives the amount of the policies. The legacy is adeemed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Ademption *pro tanto* by testator's receipt of portion of an entire fund of which a portion has been specifically bequeathed.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Order of payment where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund to another, and the testator having received a portion of that fund, the remainder is insufficient to pay both legacies.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

145. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

Illustration.

A bequeaths to B—
"His capital stock of 1,000*l.* in East India Stock."
"His promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan."
A sells the stock and the notes.
The legacies are adeemed.

146. Where stock which has been specifically bequeathed, does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

Illustration.

A bequeaths to B—
"His 10,000 rupees in the 5½ per cent. loan of the Government of India."

A sells one-half of his 10,000 rupees in the loan in question.
One-half of the legacy is adeemed.

147. A specific bequest of goods under a description connecting them with a certain place, is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Non-ademption of specific bequest of goods described as connected with a certain place by reason of removal.

Illustrations.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

148. The removal of the thing bequeathed from the place in which it is stated in the Will to be situated, does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

When removal of thing bequeathed does not constitute ademption.

Illustrations.

A bequeaths to B all the bills, bonds, and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the River Hooghly. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When the thing bequeathed is a valuable to be received by the testator from a third person; and the testator himself, or his representative, receives it.

149. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

Change by operation of law of subject of specific bequest between date of Will and testator's death.

150. Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India."

The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

A bequeaths to B the sum of 2,000*l.*, invested in Consols in the names of trustees for A.

The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power, under his marriage settlement, to dispose of by Will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

Change of subject without testator's knowledge.

151. Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B "all his three per cent. Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to a third party on condition that it shall be re-placed.

152. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be re-placed, and it is re-placed accordingly, the legacy is not adeemed.

Stock specifically bequeathed, sold but re-placed and belonging to the testator at his death.

153. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

PART XXII.

Of the Payment of Liabilities in respect of the Subject of a Bequest.

Non-liability of executor to exonerate specific legatees.

154. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien, or incumbrance, created by the testator himself or by any person under whom he claims; then, unless a contrary intention appears by the Will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance. A contrary intention shall not be inferred from any direction which the Will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this Section.

Illustrations.

(*a*) A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(*b*) A bequeaths to B a zamíndárí, which at A's death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where any thing is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(*a*) A having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(*b*) A having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

Exoneration of legatee's immoveable property for which land-revenue or rent is payable periodically.

156. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

Exoneration of specific legatee's stock in a Joint Stock Company.

157. In the absence of any direction in the Will, where there is a specific bequest of stock in a Joint Stock Company, if any call or other payment is due from the testator at the time of his death in respect of such

stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate; but if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(*a*) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(*b*) A has agreed to take 50 shares in an intended Joint Stock Company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(*c*) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(*d*) A bequeaths to B his shares in a Joint Stock Company. B accepts the bequest. Afterwards the affairs of the Company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(*e*) A is the owner of ten shares in a Railway Company. At a meeting held during his lifetime, a call is made of 3*l.* per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.

Of Bequests of Things described in general Terms.

Bequest of thing described in general terms.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations.

(*a*) A bequeaths to C *a* pair of carriage horses, or *a* diamond ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

(*b*) A bequeaths to B "*his* pair of carriage horses." A had no carriage horses at the time of his death. The legacy fails.

PART XXIV.

Of Bequests of the Interest or Produce of a Fund.

Bequest of the interest or produce of a fund.

159. Where the interest or produce of a fund is bequeathed to any person, and the Will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Illustrations.

(*a*) A bequeaths to B the interest of his 5 per cent. promissory notes of the Government of India. There is no other clause in the Will affecting those securities. B is entitled to A's 5 per cent. promissory notes of the Government of India.

(*b*) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death.

(*c*) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.

Of Bequests of Annuities.

Annuity created by Will is payable for life only, unless a contrary intention appears by the Will.

160. Where an annuity is created by Will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the Will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(*a*) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(*b*) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(*c*) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

Period of vesting where Will directs that an annuity be provided out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity.

161. Where the Will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the Will.

Illustrations.

(*a*) A by his Will directs that his executors shall out of his property purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(*b*) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

Abatement of annuity.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the Will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the Will.

Where there is a gift of an annuity, and a residuary gift, the whole of the annuity to be first satisfied.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

PART XXVI.

Of Legacies to Creditors and Portioners.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the Will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Creditor *primâ facie* entitled to legacy as well as debt.

165. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his Will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Child *primâ facie* entitled to legacy as well as portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

No ademption by subsequent provision for legatee.

Illustrations.

(*a*) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(*b*) A bequeaths 40,000 rupees to B, his orphan niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.

Of Election.

167. Where a man, by his Will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the Will.

Circumstances in which election takes place.

168. The interest so relinquished shall devolve as if it had not been disposed of by the Will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the Will.

Devolution of interest relinquished by the owner.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his Will to be his own.

Testator's belief as to his ownership immaterial.

Illustrations.

(*a*) The farm of Sultánpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C is elected to retain his farm of Sultánpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(*b*) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(*c*) A bequeaths to B 1,000 rupees, and to C an estate which will under a settlement belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(*d*) A, a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and subject thereto devises and bequeaths to B "all his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the Will. C may claim his legacy without giving up the real property in England.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Bequest for a man's benefit how regarded for the purpose of election.

Illustration.

The farm of Sultánpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultánpur Buzurg to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the Will or keep his farm of Sultánpur Khurd in opposition to it.

171. A person taking no benefit directly under the Will, but deriving a benefit under it indirectly, is not put to his election.

A person deriving a benefit indirectly not put to his election.

Illustration.

The lands of Sultánpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultánpur to B, and 1,000 rupees to C. C dies intestate, shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the Will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultánpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultánpur in opposition to the Will.

172. A person who in his individual capacity takes a benefit under the Will, may in another character elect to take in opposition to the Will.

A person taking under a Will in his individual capacity, may in another character elect to take in opposition to it.

Illustration.

The estate of Sultánpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultánpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultánpur in opposition to the Will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the Will.

Exception to the six last Rules.—Where a particular gift is expressed in the Will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the Will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the Will.

Illustration.

Under A's marriage settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultánpur during her life.

A by his Will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultánpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

When acceptance of a benefit given by a Will constitutes an election to take under the Will.

173. Acceptance of a benefit given by the Will constitutes an election by the legatee to take under the Will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations.

(*a*) A is owner of an estate called Sultánpur Khurd and has a life interest in another estate called Sultánpur Buzurg to which, upon his death, his son B will be absolutely entitled. The Will of A gives the estate of Sultánpur Khurd to B, and the estate of Sultánpur Buzurg to C. B, in ignorance of his own right to the estate of Sultánpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultánpur Khurd. B has not confirmed the bequest of Sultánpur Buzurg to C.

(*b*) B, the eldest son of A, is the possessor of an estate called Sultánpur. A bequeaths Sultánpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultánpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultánpur to C.

Presumption arising from enjoyment by legatee for two years.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the Will without doing any act to express dissent.

Confirmation of bequest by act of legatee.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

When testator's representatives may call upon legatee to elect.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the Will, the representatives shall, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the Will.

Effect of non-compliance with their request within a reasonable time.

Postponement of election in case of disability.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

PART XXVIII.

Of Gifts in Contemplation of Death.

Property transferable by gift made in contemplation of death.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by Will. A gift is said to be made in contemplation of death where a man who is ill and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness. Such a gift may be resumed by the giver. It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

When a gift is said to be made in contemplation of death.

Such gift resumable.

When it fails.

Illustrations.

(*a*) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

A watch.
A bond granted by C to A.
A Bank Note.
A promissory note of the Government of India endorsed in blank.
A Bill of Exchange endorsed in blank.
Certain mortgage deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—
The watch.
The debt secured by C's bond.
The Bank Note.
The promissory note of the Government of India.
The Bill of Exchange.
The money secured by the mortgage deed.

(*b*) A being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(*c*) A being ill and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.

Of Grant of Probate and Letters of Administration.

Character and property of executor or administrator as such.

179. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Administration with copy annexed of authenticated copy of Will proved abroad.

180. When a Will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate to be granted to executor appointed by Will.

181. Probate can be granted only to an executor appointed by the Will.

Appointment express or implied.

182. The appointment may be express or by necessary implication.

Illustrations.

(*a*) A wills that C be his executor if B will not; B is appointed executor by implication.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c*) A appoints several persons executors of his Will and Codicils, and his nephew residuary legatee, and in another Codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my Will and Codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Grant of probate to several executors simultaneously or at different times.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's Will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

Separate probate of Codicil discovered after grant of probate.

185. If a Codicil be discovered after the grant of probate, a separate probate of that Codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the Will.

Procedure when different executors are appointed by the Codicil.

If different executors are appointed by the Codicil, the probate of the Will must be revoked, and a new probate granted of the Will and the Codicil together.

Accrual of representation to surviving executor.

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

No right as executor or legatee can be established, unless probate or letters of administration shall have been granted by a competent Court.

187. No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the Province shall have granted probate of the Will under which the right is claimed, or shall have granted letters of administration under the one hundred and eightieth Section.

Probate establishes the Will from testator's death.

188. Probate of a Will when granted establishes the Will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Persons to whom letters of administration may not be granted.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

No right to intestate's property can be established, unless administration previously granted by a competent Court.

190. No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

From what period letters of administration entitle administrator to intestate's rights.

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts of administrator not validated by letters of administration.

192. Letters of administration do not render valid any intermediate acts of the administrator, tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship; except that

Exception.

when one or more of several executors have proved a Will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the Will appointing him executor.

Procedure where executor renounces or fails to accept within the time limited.

195. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the Will may be proved and letters of administration, with a copy of the Will annexed, may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

196. When the deceased has made a Will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the Will, or when the executor dies after having proved the Will but before he has administered all the estate of the deceased; an universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

197. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the Will annexed as such residuary legatee.

198. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly.

Grant of administration when there is no executor, nor residuary legatee, nor representative of such legatee.

199. Letters of administration with the Will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next of kin to accept or refuse letters of administration.

Citation to be issued before grant of administration to any legatee other than universal or residuary.

200. When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

Order in which connections by marriage or consanguinity are entitled to administration.

201. If the deceased has left a widow, administration shall be granted to the widow unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Administration to be granted to widow unless Court see cause to exclude her.

Illustrations.

(*a*) The widow is a lunatic, or has committed adultery, or has been barred by her marriage settlement of all interest in her husband's estate; there is cause for excluding her from the administration.

(*b*) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

202. If the Judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow.

Persons associated with widow in administration.

203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate; provided that when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Grant of administration where no widow, or widow excluded.

Proviso.

204. Those who stand in equal degree of kindred to the deceased, are equally entitled to administration.

Deceased's kindred of equal degree, equally entitled to administration.

205. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

Right of widower to administration of wife's estate.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration and willing to act, they may be granted to a creditor.

Grant of administration to a creditor.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

Where deceased has left property in British India, administration must be granted according to the foregoing rules.

PART XXX.

Of Limited Grants.

(*a*). *Grants limited in Duration.*

208. When the Will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the Will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of copy or draft of lost Will.

209. When the Will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of contents of lost or destroyed Will.

210. When the Will is in the possession of a person residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the Will or an authenticated copy of it be produced.

Probate of copy where original exists.

211. Where no Will of the deceased is forthcoming, but there is reason to believe that there is a Will in existence, letters of administration may be granted, limited until the Will, or an authenticated copy of it, be produced.

Administration until the Will be produced.

(*b*). *Grants for the Use and Benefit of Others having Right.*

212. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration, with the Will annexed, may be granted to the Attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration, with the Will annexed, to Attorney of an absent executor.

213. When any person to whom, if present, letters of administration, with the Will annexed, might be granted, is absent from the Province, letters of administration, with the Will annexed, may be granted to his Attorney, limited as above mentioned.

Administration, with the Will annexed to Attorney of an absent person, who, if present, would be entitled to administer.

214. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the Attorney of the absent person, limited as before mentioned.

Administration to Attorney of absent person entitled to administer in case of intestacy.

215. When a minor is sole executor or sole residuary legatee, letters of administration, with the Will annexed, may be granted to the legal guardian of such minor or to such other person as the Court shall think fit until the minor shall have completed the age of eighteen years, at which period and not before probate of the Will shall be granted to him.

Administration during minority.

216. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Administration until one of several minor executors or residuary legatees attains majority.

217. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the Will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or if there be no such person to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

Administration for use and benefit of lunatic *jus habens*.

218. Pending any suit touching the validity of the Will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

Administration *pendente lite*.

(c). For Special Purposes.

219. If an executor be appointed for any limited purpose specified in the Will, the probate shall be limited to that purpose, and if he should appoint an Attorney to take administration on his behalf, the letters of administration with the Will annexed shall accordingly be limited.

Probate limited to purpose specified in the Will.

220. If an executor appointed generally give an authority to an Attorney to prove a Will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the Will annexed shall be limited accordingly.

Administration with the Will annexed limited to a particular purpose.

221. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Administration limited to property in which a person has a beneficial interest.

222. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to a suit.

223. If at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to the purpose of becoming a party to a suit to be brought against administrator.

224. In any case in which it may appear necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate, may grant to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Administration limited to collection and preservation of deceased's property.

225. When a person has died intestate, or leaving a Will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the Province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who under ordinary circumstances would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator, and in every such case letters of administration may be limited or not as the Judge shall think fit.

Appointment as administrator, of person other than the one who under ordinary circumstances would be entitled to administration.

(d) Grants with Exception.

Probate or administration with the Will annexed, subject to exception.

226. Whenever the nature of the case requires that an exception be made, probate of a Will, or letters of administration with the Will annexed, shall be granted subject to such exception.

Administration with exception.

227. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e) Grants of the Rest.

Probate or administration of the rest.

228. Whenever a grant, with exception, of probate or letters of administration, with or without the Will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f) Grants of Effects unadministered.

Grant of effects unadministered.

229. If the executor to whom probate has been granted have died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

230. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when a limited grant has expired, and there is still some part of the estate unadministered.

231. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

(g) Alteration in Grants.

What errors may be rectified by the Court.

232. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where Codicil discovered after grant of administration with Will annexed.

233. If, after the grant of letters of administration with the Will annexed, a Codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

(h) Revocation of Grants.

Revocation or annulment for just cause, of grant of probate or administration.

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—Just cause is, 1st, that the proceedings to obtain the grant were defective in substance; 2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; 3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; 4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

(*a*) The Court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The Will of which probate was obtained was forged or revoked.

(*d*) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B as if he had died intestate, but a Will has since been discovered.

(*f*) Since probate was granted, a later Will has been discovered.

(*g*) Since probate was granted, a Codicil has been discovered, which revokes or adds to the appointment of executors under the Will.

(*h*) The person to whom probate was or letters of administration were granted has subsequently become of unsound mind.

PART XXXI.

Of the Practice in granting and revoking Probates and Letters of Administration.

Jurisdiction of District Judge in granting and revoking probates and letters of administration.

235. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his District.

District Judge's powers as to the granting of probate and administration.

236. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any Civil suit or proceeding depending in his Court.

District Judge may order any person to produce testamentary papers.

237. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same, and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to

in case he had been a party to a suit, and had made such default, and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated so far as the circumstances of the case will admit by the Code of Civil Procedure.

When and how District Judge is to interfere for the protection of property.

239. Until probate be granted of the Will of a deceased person, or an administrator of his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to interfere for the protection of such property, at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

Probate or administration may be granted by District Judge, when testator or intestate at his death had a fixed dwelling or any property within the jurisdiction.

240. Probate of the Will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

When application is made to the Judge of a District in which the deceased had no fixed abode.

241. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another District, or where the application is for letters of administration, to grant them absolutely or limited to the property within his own jurisdiction.

Conclusiveness of probate or letters of administration.

242. Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

Conclusiveness of application for probate or administration, if properly made and verified.

243. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached, by reason that the testator or intestate had no fixed place of abode, or no property within the District at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the Will annexed, and stating the time of the testator's death, that the writing annexed is his last Will and testament, that it was duly executed, and that the petitioner is the executor therein named; and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge.

In what cases translation of Will to be annexed to the petition.

245. In cases wherein the Will is written in any language other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or if the Will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—"I (A B) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Verification of translation made by any person other than the Court translator.

Petition for letters of administration.

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating the time and place of the deceased's death, the family or other relatives of the deceased, and their respective residences, the right in which the petitioner claims, that the deceased left some property within the jurisdiction of the District Judge to whom the application is made, and the amount of assets which are likely to come to the petitioner's hands.

Petition for probate or letters of administration to be signed and verified.

247. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A B*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one of the witnesses to the Will.

248. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the Will (when procurable), in the manner or to the effect following:—

"I (*C D*), one of the witnesses to the last Will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*), (*or* that the said tes-

tator acknowledged the writing annexed to the above petition to be his last Will and testament in my presence").

Punishment for making false averment in petition or declaration.

249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person and require further evidence, and issue citations to inspect the proceedings.

250. In all cases it shall be lawful for the District Judge, if he shall think proper, to examine the petitioner in person, upon oath or solemn affirmation, and also to require further evidence of the due execution of the Will, or the right of the petitioner to the letters of administration, as the case may be, and to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge issuing the same may direct.

Publication of citation.

Caveat against grant of probate or administration.

251. Caveats against the grant of probate or administration may be lodged with the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to any other Judge to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

252. The caveat shall be to the following effect:—"Let nothing be done in the matter of the estate of A B, late of , deceased, who died on the day of at , without notice to C D of ."

After entry of caveat, no proceeding to be taken on the petition until after notice to the caveator.

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge to whom the application has been made, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

Grant of probate to be under seal of the Court.

254. When it shall appear to the Judge that probate of a Will should be granted, he will grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, Judge of the District of hereby make known that on the day of in the year the last Will of late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his Will, was granted to the executor in the said Will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a true account thereof."

Grant of letters of administration to be under seal of Court.

255. And wherever it shall appear to the District Judge that letters of administration to the estate of a person deceased, with or without a copy of the Will annexed, should be granted, he will grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of , hereby make known that on the day of letters of administration (with *or* without the Will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father *(or as the case may be)* of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a true account thereof."

Administration Bond.

256. Every person to whom any grant of administration shall be committed shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct.

Assignment of administration-bond.

257. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Probate not to be granted until after seven days, and letters of administration until after fourteen days, from the testator's or intestate's death.

258. No probate of a Will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days from the day of the testator or intestate's death.

Filing of original Wills of which probate or letters of administration with Will annexed have been granted.

259. Every District Judge shall file and preserve all original Wills of which probate or letters of administration with the Will annexed may be granted by him among the records of his Court, until some public registry for Wills is established; and the Local Government shall make regulations for the pre-

servation and inspection of the Wills so filed as aforesaid.

Grantee of probate or letters of administration shall alone have power to sue, &c., until the same shall have been revoked.

260. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

261. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or letters of administration revoked.

262. Where any probate is or letters of administration are revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Right of such executor or administrator to recoup himself for payments.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Appeals from orders made by District Judge under powers conferred by this Act.

263. Every order made by a District Judge by virtue of the powers hereby conferred upon him, shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent Jurisdiction of High Court.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

PART XXXII.

Of Executors of their own Wrong.

Executor of his own wrong.

265. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Exceptions. First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another, does not make an executor of his own wrong.

Illustrations.

(*a*) A uses or gives away or sells some of the goods of the deceased or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(*b*) A having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(*c*) A sues as executor of the deceased not being such. He is an executor of his own wrong.

Liability of an executor of his own wrong.

266. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.

Of the Powers of an Executor or Administrator.

In respect of causes of action surviving the deceased, and rents due at the time of his death.

267. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

Demands and rights of action in favour of or against deceased, survive to and against his executor or administrator.

268. All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustrations.

(*a*) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(*b*) A sues for divorce. A dies. The cause of action does not survive to his representative.

Power of executor or administrator to dispose of deceased's property.

269. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Illustrations.

(*a*) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(*b*) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

270. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators, exercisable by one.

271. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the Will or taken out administration.

Illustrations.

(*a*) One of the several executors has power to release a debt due to the deceased.

(*b*) One has power to surrender a lease.

(*c*) One has power to sell the property of the deceased, moveable or immoveable.

(*d*) One has power to assent to a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The Will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

272. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

Powers of administrator of effects unadministered.

273. The administrator of effects unadministered has, with respect to such effects, the same power as the original executor or administrator.

Powers of administrator during minority.

274. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

PART XXXIV.

Of the Duties of an Executor or Administrator.

As to deceased's funeral.

276. It is the duty of the executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

277. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same may have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that may have come to his hands, and the manner in which they have been applied or disposed of.

Duty of executor or administrator as to property of, and debts owing to, the deceased.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

279. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid next after such expenses.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then the other debts.

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan, or domestic servant are next to be paid, and then the other debts of the deceased.

Save as aforesaid, all debts to be paid equally and rateably.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account. But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Application of moveable property to payment of debts, where the deceased's domicile was not in British India.

283. If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 10,000 rupees, immoveable property to the value of 5,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The debts on the instruments under seal are to be paid in full out of the moveable estate, and the proceeds of the immoveable estate are to be applied as far as they will extend towards the discharge of the debts not under seal. Accordingly, one-half of the amount of the debts not under seal is to be paid out of the proceeds of the immoveable estate.

Creditor paid in part under Section 283 to bring such payment into account before sharing in proceeds of immoveable property.

284. No creditor who has received payment of a part of his debt by virtue of the last preceding Section shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount,

The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed ratably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

285. Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

286. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

287. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

Non-abatement of specific legacy when assets sufficient to pay debts.

288. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Right under demonstrative legacy, when the assets are sufficient to pay debts and necessary expenses.

289. Where there is a demonstrative legacy and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Rateable abatement of specific legacies.

290. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B. and rupees 666-10-8 to C.

Legacies treated as general for purpose of abatement.

291. For the purpose of abatement, a legacy for life, a sum appropriated by the Will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

PART XXXV.

Of the Executor's Assent to a Legacy.

Executor's assent necessary to complete legatee's title.

292. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(*a*) A by his Will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*) A by his Will has bequeathed to C his house in Calcutta in the tenancy of D. C is not entitled to receive the rents without the assent of the executor.

Effect of executor's assent to specific legacy.

Assent may be verbal, and either express or implied.

293. The assent of the executor to a specific bequest shall be sufficient to devest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way. This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*) The interest of a fund is directed by the Will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

294. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(*a*) A bequeaths to B his lands of Sultánpur, which at the date of the Will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

Implied assent.

295. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied. Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Assent of executor gives effect to legacy from testator's death.

296. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(*a*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor not bound to pay or deliver legacies until after one year from testator's death.

297. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

PART XXXVI.

Of the Payment and Apportionment of Annuities.

Commencement of annuity when no time fixed by Will.

298. Where an annuity is given by the Will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When payment of annuity to be paid quarterly or monthly first falls due.

299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

Dates of successive payments when first payment of an annuity directed to be made within a given time, or on a day certain.

300. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the Will authorizes the first payment to be made; and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

PART XXXVII.

Of the Investment of Funds to provide for Legacies.

Investment of sum bequeathed where a legacy, not specific, is given for life.

301. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of amount of general legacy to be paid at a future time.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding Section. The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

Procedure when no fund is charged with or appropriated to an annuity.

303. Where an annuity is given and no fund is charged with its payment or appropriated by the Will to answer it, a Government annuity of the specified amount shall be purchased, or, if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

Transfer to residuary legatee of amount of contingent bequest.

304. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed to a person for life, without direction to invest in particular securities.

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities, shall be converted into money and invested in such securities.

Investment of residue bequeathed to a person for life, with direction to invest in specified securities.

306. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and manner of the conversion and investment.

307. Such conversion and investment as are contemplated by the two last preceding Sections shall be made at such times and in such manner as the executor shall in his discretion think fit; and until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

Procedure where minor is entitled to immediate payment or possession of bequest, and there is no direction to pay to any person on his behalf.

308. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the Will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom the probate was or letters of administration with the Will annexed were granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and if the legatee be a ward of the Court of Wards the legacy shall be paid into that Court to his account, and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money

so paid; and such money when paid in shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

PART XXXVIII.

Of the Produce and Interest of Legacies.

Legatee of a specific legacy entitled to produce thereof from testator's death.

309. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee entitled to produce of residuary fund from testator's death.

310. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time is fixed for payment of a general legacy.

311. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions. (1.)—Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.)—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.)—Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time has been fixed.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the Will for maintenance.

Rate of interest.

313. The rate of interest shall be four per cent. per annum.

No interest payable on arrears of annuity within first year after testator's death.

314. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the Will for making the first payment of the annuity.

Interest payable on sum to be invested to produce annuity.

315. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

PART XXXIX.

Of the Refunding of Legacies.

Refund of legacy paid under Judge's orders.

316. When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund if legacy paid voluntarily.

317. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

Refund when legacy has become due on performance of a condition within further time allowed under Section 124.

318. When the time prescribed by the Will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under the one hundred and twenty-fourth Section, for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

When each legatee is compellable to refund in proportion.

319. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

320. Where an executor or administrator has given such notices as would have been given by the High Court in an administration suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution; but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

Within what period a creditor may call upon a legatee to refund.

321. A creditor who has not received payment of his debt may, within two years after the death of the testator or one year after the legacy has been paid, call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor was voluntary or not.

When a legatee who has not received payment or who has been compelled to refund under Section 321, cannot oblige one who has received payment in full to refund.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding Section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When an unsatisfied legatee must first proceed against executor, if solvent.

323. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to the refunding of one legatee to another.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

325. The refunding shall in all cases be without interest.

Residue of the deceased's property after usual payments to be paid to residuary legatee.

326. The surplus or residue of the deceased's property after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the Will.

PART XL.

Of the Liability of an Executor or Administrator for Devastation.

Liability of executor or administrator for devastation.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

For neglect to get in any part of the deceased's property.

328. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.

Miscellaneous.

Stamps and fees on instruments mentioned in this Act.

329. For every instrument or writing of any of the kinds specified in the Schedule to this Act, and which shall be made or executed after the commencement of this Act, there shall be payable to Government a Stamp duty or fee of the amount indicated in the said Schedule.

Saving of rights, duties, and privileges of Administrator General.

330. Nothing contained in this Act shall be deemed or taken to supersede or affect the rights, duties, and privileges of the Administrators General and Officiating Administrators General of Bengal, Madras and Bombay respectively, under or by virtue of Act VIII of 1855 (*to amend the law relating to the office and duties of Administrator General*), Act XXVI of 1860 (*to amend Act VIII of* 1855), The Regimental Debts Act, 1863, and the Administrator General's Act, 1865; and it shall be the duty of the Magistrate or other Chief Officer charged with the executive administration of a district or place in criminal matters, whenever any person to whom the provisions of this Act shall apply shall die within the

limits of his jurisdiction, to report the circumstances without delay to the Administrator General of the Province, retaining the property under his charge until letters of administration shall have been obtained by that Officer or by some other person, when the property is to be delivered over to the person obtaining such letters, or who may obtain probate of the Will (if any) of the deceased.

Succession to property of Hindús, Muhammadans or Buddhists, and certain Wills, intestacies and marriages, not affected by this Act.

331. The provisions of this Act shall not apply to Intestate or Testamentary succession to the property of any Hindú, Muhammadan or Buddhist; nor shall they apply to any Will made, or any intestacy occurring before the first day of January 1866. The fourth Section shall not apply to any marriage contracted before the same day.

Power of Governor General to exempt any race, sect, or tribe in British India from the operation of this Act.

332. The Governor-General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect or tribe in British India or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order. The Governor-General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect. All orders and revocations made under this Section shall be published in the *Gazette of India*.

SCHEDULE.

STAMPS.

		Stamps.		
Petition for probate or letters of administration where the value of the estate exceeds Rs. 500 ...	Rs.	10	0	0
Ditto where the value of the estate is less than Rs. 500 ...	Re.	1	0	0
Probate or letters of administration ...	Rs.	8	0	0
Caveat ...	Rs.	4	0	0
Citation ...	Re.	1	0	0
All petitions other than those above mentioned ...	Re.	1	0	0
Inventory ...	Re.	1	0	0
Administration-bond ...	Rs.	8	0	0

FEE.

Translations by the Court Translator or by order of the Court, per folio of ninety words ...	Rs.	2	0	0

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor-General on the 15th March 1865, and is hereby promulgated for general information:—

ACT No. XI OF 1865.

An Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature.

Preamble.

Whereas it is expedient to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature; It is enacted as follows:—

1. In this Act, unless there be something repugnant in the subject or context—

Number.

Words importing the singular number include the plural, and words importing the plural number include the singular.

Gender.

Words importing the masculine gender include females.

"Judge."

"Judge" includes an Acting Judge.

"Section."

"Section" means a Section of this Act.

"Court of Small Causes."

"Court of Small Causes" means a Court constituted under this Act.

"Local Government."

And, in every part of British India in which this Act operates, "Local Government" denotes the person authorized to administer the Executive Government in such part, and "High Court" denotes

"High Court."

the highest Civil Court of Appeal having jurisdiction therein.

Repeal of Acts XLII of 1860 and XII of 1861.

2. Act XLII of 1860 *(for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)*, and Act XII of 1861 *(to amend Act XLII of 1860)* are hereby repealed: Provided that any Courts of Small Causes now in existence which shall have been constituted under Act No. XLII of 1860, shall be considered as constituted under this Act within the territorial limits of the jurisdiction assigned to such Courts under the said Act XLII of 1860 or which may hereafter be assigned to them under the next following Section, and shall be subject to all the provisions contained herein; and all suits and proceedings pending in any such Courts shall be heard and determined in the same manner as suits and proceedings are required to be heard and determined under this Act; but this Act shall not in any way invalidate or alter the effect of anything which shall have been done in any such suit or proceeding prior to the commencement of this Act.

Constitution of Small Cause Courts.

3. The Local Government may, with the previous sanction of the Governor-General of India in Council, constitute for the trial of suits under this Act, Courts of Small Causes with such establishment of Officers as may be necessary, at any

places within the Territories under such Government. Whenever a Court of Small Causes shall be so constituted, the Local Government shall fix the territorial limits of the jurisdiction of such Court, and may from time to time alter the limits so fixed. The Local Government may abolish any Court of Small Causes.

Limits of their territorial jurisdiction to be fixed by Local Government.

4. Every Court of Small Causes shall use a seal bearing the following inscription in English and in the language of the Court—"Court of Small Causes of ,"—and shall be subject to the general control and orders of the High Court.

Seal of the Court.

Courts to be generally subject to the High Court.

5. Courts of Small Causes shall be held at such place or places within the local limits of their respective jurisdictions, as shall from time to time be appointed by the Local Government.

Places where Courts to be held.

6. The following are the suits which shall be cognizable by Courts of Small Causes, namely, claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of five hundred Rupees whether on balance of account or otherwise: Provided that no action shall lie in any such Court

Suits cognizable by Small Cause Courts.

Proviso.

(1). On a balance of partnership account, unless the balance shall have been struck by the parties or their agents:

(2). For a share or part of a share under an intestacy, or for a legacy or part of a legacy under a Will:

(3). For the recovery of damages on account of an alleged personal injury, unless actual pecuniary damage shall have resulted from the injury:

(4). For any claim for the rent of land or other claim for which a suit may now be brought before a Revenue Officer, unless, as regards arrears of rent for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the Local Government with jurisdiction over claims to such arrears.

7. The Local Government may extend the jurisdiction of any Court of Small Causes, in suits of the nature described in the last preceding Section and thereby made cognizable by Courts of Small Causes, to an amount not exceeding one thousand Rupees.

Power to extend jurisdiction of Small Cause Courts to Rupees 1,000.

8. Courts of Small Causes may try all such suits as are described in the sixth Section and thereby made cognizable by Courts of Small Causes, if the defendant at the time of the commencement of the suit shall dwell, or personally work for gain or carry on business, within the local limits of the jurisdiction of such Court; or if the cause of action arose within the said local limits, and the defendant, at the time of the commencement of the suit, shall by his servant or agent carry on business or work for gain within those limits.

Jurisdiction of the Courts.

Explanations.—(*a.*) Where a person has a permanent dwelling at one place, and also a lodging at another place for a temporary purpose only, he shall be deemed to dwell at both places in respect of any cause of action arising at the place where he has such temporary lodging.

(*b.*) A Corporation or Company shall be deemed to carry on business at its sole or principal office, or at any place where it has also a subordinate office, in respect of any cause of action arising at such place.

(*c.*) The 'business' contemplated in this Section must be carried on at some fixed place for at least a certain time.

9. Suits against the Local Government or against the Government of India shall be brought in the Court having jurisdiction at the place which is the seat of such Government.

Suits against Government.

10. Suits against the Secretary of State shall be brought in the Court having jurisdiction at the place which is the seat of the Local Government for the Territories in which the cause of action arose.

Suits against the Secretary of State.

11. Service of a summons issued under this Act, on any servant or agent by whom the defendant may carry on business or work for gain, shall be deemed to be good service upon the defendant, provided that such agent or servant himself, at the time of such service, personally carries on the business or work for gain for the defendant, within the local limits of the jurisdiction of the Court in which the suit is brought.

Substituted service of summons.

12. Wherever a Court of Small Causes is constituted under this Act, no suit cognizable by such Court shall be heard or determined in any other Court having jurisdiction within the local limits of the jurisdiction of such Court of Small Causes: Provided that nothing in this Act shall be held to take away the jurisdiction which a Magistrate, or a person exercising the powers of a Magistrate, or an Assistant or Deputy Magistrate, can now exercise in regard to debts or other claims of a Civil nature; or the jurisdiction which can be exercised by Village Moonsiffs, or Village or District Panchâyats, under the provisions of the Madras Code; or by Military Courts of Requests, or by Cantonment Joint Magistrates invested with Civil jurisdiction under Act III of 1859 *(for conferring Civil Jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting those Officers Registers of Deeds)*; or by a single Officer duly authorized and appointed under the Rules in force in the Presidencies of Madras and Bombay respectively, for the trial of small suits in Military Bazaars, in Cantonments, and Stations occupied by the troops of those Presidencies respectively; or by Panchâyats in regard to suits against Military persons, according to the Rules in force in the Presidency of Madras.

Suits cognizable by a Court of Small Causes, not to be heard by any other Court having jurisdiction within the local limits.

Saving of jurisdiction of Magistrates as to debts.

Of Village Moonsiffs and Village or District Panchâyats in Madras.

Of Military Courts of Requests.

Of Officers appointed to try small suits in Madras and Bombay.

Or of Military Panchayâts in Madras.

Judge of Court.

13. Every Court of Small Causes shall (except as hereinafter provided) be held before a Judge appointed by the Local Government, and who shall receive such salary as the Governor General of India in Council may from time to time determine. Such Judge shall be the Judge either of one such Court or of two or more such Courts as the Local Government shall appoint, but except as hereinafter provided, he shall not exercise any Civil jurisdiction except under the provisions of this Act.

Power to Judge of several Courts to fix times and dates of circuits and sittings.

14. It shall be lawful for any Judge who is the Judge of two or more Courts of Small Causes to fix, subject to the orders of the Local Government, or, in Territories under the immediate administration of the Government of India, of the Chief Commissioner or other principal Civil Authority, the times at which he will go on Circuit, and the dates on which his sittings in the several Courts of which he is Judge shall commence. Notice of such times and dates shall be published in the Official Gazette and at such places and in such manner as the Local Government or Chief Commissioner or other Authority as aforesaid shall think fit to direct in that behalf.

Local Government may invest any person for a limited period with powers of Judge of Court of Small Causes.

15. The Local Government may from time to time invest any person with the powers of a Judge of a Court of Small Causes under this Act for a limited period or for specific periods in each year only, and declare in what Court or Courts of Small Causes such powers shall be exercised by such person. Any person so invested shall, in all Courts in which the Local Government shall have declared that he shall exercise the said powers, have all such powers as might in such Courts be exercised by a Judge of the said Courts appointed under the thirteenth Section.

Powers to be exercised by persons so invested.

Jurisdiction to be exercised by persons so invested in Court in which there is a Judge.

16. If it shall be declared by the Local Government that any person invested under the last preceding Section with the powers of a Judge of a Court of Small Causes, shall exercise those powers in a Court of which there is a Judge appointed under the thirteenth Section, the person so invested shall exercise a jurisdiction concurrent with that of such Judge. The Local Government shall from time to time make Rules to provide for the distribution of business between any person so invested and any Judge in whose Court it may be declared that such person shall exercise his powers, and generally for regulating and defining the duties and relative positions of Judges of Courts of Small Causes and persons so invested as aforesaid: Provided always that no such Rule shall be in any way inconsistent with the provisions of this Act.

Remuneration of Judges and of persons invested with powers of Small Cause Court Judge, and restriction from practising within the limits.

17. Every person invested with the powers of a Judge of a Court of Small Causes under the fifteenth Section shall receive such remuneration as the Governor General in Council shall from time to time determine. It shall not be lawful for any such person to practise as a Barrister, Attorney, Vakeel, Pleader, or Law Agent in any district or place within the territorial limits of which he is empowered to exercise the powers with which he is invested.

Summons.

18. In all suits under this Act, the summons to the defendant shall be for the final disposal of the suit, and no written statement other than the plaint shall be received unless required by the Court.

In suits cognizable by Small Cause Courts, Court may on the judgment-creditor's application direct immediate execution against the judgment-debtor's person or movable property.

19. When a decree is passed in any suit of the nature and amount cognizable under this Act, the Court passing the decree may, at the same time that it passes the decree, on the verbal application of the party in whose favor the decree is given, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court passing the decree, or against the movable property of the judgment-debtor within the same limits. If the warrant be directed against the movable property of the judgment-debtor, it may be general against any personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the Court, or special against any personal property belonging to the judgment-debtor within the same limits, and which shall be indicated by the judgment-creditor.

Execution against immovable property, if movable property not sufficient.

20. In the execution of a decree under this Act, if, after the sale of the movable property of a judgment-debtor, any portion of a judgment-debt shall remain due, and the holder of the judgment desire to issue execution upon any immovable property belonging to the judgment-debtor, the Court, on the application of the holder of such judgment, shall grant him a copy of the judgment and a certificate of any sum remaining due under it; and on the presentation of such copy and certificate to any Court of Civil Judicature having general jurisdiction in the place in which the immovable property of the judgment-debtor is situate, such Court shall proceed to enforce such judgment according to its own rules and mode of procedure in like cases.

Decision in suits tried under this Act to be final.

21. In suits tried under this Act, all decisions and orders of the Court shall be final: Provided that in any case in which a decree shall be passed *ex parte* against a defendant, he may within thirty days after any process for enforcing the decree has been executed give notice to the Court by which the decree was passed, of his intention to apply to the Court at its next sitting for an order to set it aside: and if, on the application being made to the Court at its next sitting, it shall be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was heard, the Court shall pass an order setting aside the decree and shall appoint a day for proceeding with the suit, upon such terms as to costs or otherwise as shall to the Court seem proper:

Ex parte decree may be set aside.

New trial.

Provided also that it shall be competent to the Court, if it

shall think fit, in any case not falling within the proviso last aforesaid, to grant a new trial, if notice of the intention to apply for the same at the next sitting of the Court be given to the Court within the period of seven days from the date of the decision, and if the same be applied for at the next sitting of the Court; but no such new trial shall be granted where the party applying for the same is the defendant or one of the defendants, unless he shall with his notice of application deposit in Court the amount for which a decree shall have been passed against him, including the costs (if any) of the opposite party.

On deposit of debt and costs.

22. If in the trial of any suit under this Act any question of law, or usage having the force of law, or any question as to the construction of a document which construction may affect the merits of the decision, shall arise, the Court, in suits for an amount not exceeding five hundred rupees, may, either of its own motion or on the application of any of the parties to the suit, and in suits for an amount greater than five hundred rupees shall, draw up a statement of the case and refer it, with the Court's own opinion, for the decision of the High Court.

Power to refer questions of law, &c., to High Court.

23. The Court may proceed in the case notwithstanding such reference, and may pass a decree contingent upon the opinion of the High Court on the point referred; but no execution shall be issued in any case in which a reference shall have been made, until the receipt of the order of the High Court.

Power to pass decree contingent upon the opinion of the High Court.

24. The High Court shall fix an early day for the hearing of the case, and shall cause notice of such day to be placed in the Court-house.

High Court to fix day for the hearing.

25. The parties to the case may appear and be heard in the High Court in person or by Pleader.

Parties may appear and be heard in person or by Pleader.

26. The High Court when it has heard and considered the case, shall send a copy of its judgment, under the seal of the Court, to the Court by which the reference was made; and such Court shall, on the receipt of the copy, proceed to dispose of the case conformably to the decision of the High Court.

Decision of High Court to be transmitted.

27. Costs, if any, consequent on the reference of a case for the opinion of the High Court, shall be costs in the suit.

Costs of reference to High Court.

28. When a case is referred to the High Court under the twenty-second Section, the High Court may alter, cancel, or set aside any order or decree which the Court stating the case may have made in the suit out of which the reference arose, and may make such order as the justice of the case may require.

Power to High Court to alter or set aside order or decree made in the matter.

29. Whenever more Courts than one are constituted in any District under this Act, the Local Government may appoint one of the same Courts to be the Principal Court of Small Causes in such District.

Power to appoint one of the Courts of a District to be the Principal Court.

30. The Judge of the Principal Court of Small Causes in any District may sit with the Judge of any other Court of Small Causes in the same District, or with a person invested with the powers of a Judge as aforesaid in such Court, for the trial and determination of any suit cognizable under this Act, and shall so sit for the trial and determination of any such suit which the Judge of such other Court or other person as aforesaid may reserve for trial by himself and the Judge of the Principal Court of Small Causes.

Judge of Principal Court may sit with Judge of any other Court in the District for the trial of reserved suits.

31. The Local Government may from time to time make Rules providing that in such cases as shall be prescribed in such Rules, two Judges or a Judge and a person invested with the powers of a Judge as aforesaid, shall sit together and hear and dispose of suits and applications.

Procedure when two Judges sit together for trial of certain suits.

32. If two Judges, or a Judge and a person invested with the powers of a Judge as aforesaid, sit together and they concur in the decision or order to be passed, such decision or order shall be the decision or order of the Court: but if they shall differ on a point of law, or usage having the force of law, or in construing a document the construction of which may affect the merits of the decision, they shall submit a case for the opinion of the High Court on the point of difference between them, in the manner prescribed in the twenty-second Section of this Act; and the provisions applicable to a reference to the High Court, contained in the twenty-second, twenty-third, twenty-fourth, twenty-fifth and twenty-sixth Sections of this Act shallbe applicable to every reference made under this Section.

Procedure when two Judges differ on a point of law.

33. If two Judges differ on any matter other than the matters above-mentioned, the Judge who is senior in respect of date of appointment as a Judge of a Court of Small Causes shall have the casting voice.

Casting voice in case of difference between two Judges on a question of fact.

34. If a Judge and a person invested with the powers of a Judge as aforesaid differ on any matter other than the matters above mentioned, the Judge shall have the casting voice.

Casting voice in case of difference on a question of fact between a Judge and a person invested with a Judge's powers.

35. It shall be lawful for the Local Government to appoint to any Court of Small Causes an Officer who shall be called the Registrar of the Court, and who shall be paid such salary as shall from time to time be authorized in that behalf by the Governor General of India in Council.

Appointment of Registrar.

Duties of Registrar.

36. The Registrar of every Court of Small Causes shall be the chief Ministerial Officer of the Court. In addition to any other duties and powers herein imposed or conferred upon the Registrar, he shall, subject to the provisions contained in the next following Section, receive all plaints presented to the Court; issue notice of suit to the defendants; receive any documents which the parties may wish to put in; and issue process for the attendance of their witnesses. He shall likewise keep lists of all causes coming on for trial, and fix such days for their being heard respectively, as may seem to him fit. He may also receive notices under the twenty-first Section.

Procedure where Registrar thinks plaint defective in certain particulars.

37. If, when the Judge is absent on duty and there is no person invested with the powers of a Judge as aforesaid, the Registrar shall be of opinion that any plaint presented to the Court is defective in any of the particulars mentioned in Sections twenty-seven to thirty-two both inclusive, of the Code of Civil Procedure, he may reject the same. But it shall be lawful for the Judge or for any person invested with the powers of a Judge as aforesaid to reject any plaint which may have been received by the Registrar, and to receive any plaint which may have been rejected by him: Provided that such reception or rejection (as the case may be) by the Registrar shall, in the opinion of such Judge or other person empowered as aforesaid, have been erroneous, and that an application to set the same aside shall be made at the first subsequent sitting in the said Court of a Judge or other person duly empowered as aforesaid.

Proviso.

Registrar may receive and enter up judgments by confession.

38. If a suit shall have been instituted in a Court of Small Causes, and the defendant shall have been duly summoned to appear and answer therein, and if before the day appointed for the hearing of such suit, the defendant or his agent duly authorized in that behalf shall appear before the Registrar of the Court, and admit the plaintiff's claim and apply for leave to confess judgment, it shall be lawful for the Registrar, if the Judge be absent on duty and there be no person invested with the powers of a Judge as aforesaid, to enter on the record a decree for the plaintiff by confession, and such decree shall have the like force and effect as a decree for the plaintiff would have had if the suit had been heard by the Judge and a decree passed by him for the plaintiff: Provided that in every case, before passing a decree under this Section, it shall be the duty of the Registrar fully to satisfy himself of the service of the summons, of the identity of the parties, and of their good faith in appearing before him.

Proviso.

Execution of decrees by Registrar.

39. The Registrar, if the Judge be absent on duty and there be no person invested with the powers of a Judge as aforesaid, shall also receive applications for the execution of decrees passed by the Judge, or other person empowered as aforesaid, of the Court of which he is the Registrar, and, subject to any orders which he may receive from the Judge or such other person, shall execute such decrees in the same manner as the Judge might execute them. No appeal shall lie from any order passed by the Registrar under this Section; but the Judge or other person empowered as aforesaid may, within three calendar months from the making of the order, of his own motion reverse or modify it.

Power to invest Registrar with jurisdiction of Small Cause Court Judge in certain cases.

40. The local Government may invest any Registrar with the powers of a Judge of a Court of Small Causes in suits arising within the local limits of the jurisdiction of the Court of which he is the Registrar, provided that the amount or value of the claim shall not exceed twenty Rupees. The Registrar shall exercise such powers subject to the general control of the Judge, or, when there is no Judge, of any person invested with the powers of a Judge as aforesaid.

Hearing of suits cognizable by Registrar.

41. The suits cognizable by the Registrar under the last preceding Section shall be set down for hearing before such Registrar, and he shall hear and determine such suits and execute the decrees made therein, in such manner in all respects as the Judge of the Court might hear, determine and execute the same respectively: Provided that the Judge, or, when there is no Judge, the person invested with the powers of a Judge, whenever he thinks proper, may transfer to his own file any suit on the file of the Registrar, and may hear and determine the same.

Transfer from Registrar's to Judge's file.

No appeal from decision of Registrar under last Section; but in cases of doubt, he may submit statement for opinion of Judge.

42. No appeal shall lie from any order or decision made or passed by the Registrar, in any case heard or disposed of by him; but in any case in which the Registrar shall entertain any doubt upon any question of law, or usage having the force of law, or as to the construction of a document which construction may affect the merits of the decision, he shall be at liberty to state a case for the opinion of the Judge, or, when there is no Judge, of the person invested with the powers of a Judge as aforesaid, in like manner as the Judge may, under the twenty-second Section of this Act, state a case for the opinion of the High Court; and all the provisions herein contained, relative to the stating of a case by the Judge, shall apply, *mutatis mutandis*, to the stating of a case by the Registrar.

Provisions applicable to such reference.

Setting aside decree by a Registrar under Section 38.

43. A decree passed by a Registrar under the thirty-eighth Section may be set aside by the Judge of the Court, or, when there is no Judge, by the person invested with the powers of a Judge as aforesaid, in such manner and on such grounds only as it might be set aside if it were a decree passed at the hearing of the cause by the Judge or other person empowered as aforesaid.

Appointment and removal of Clerk of the Court.

44. An Officer to be styled the Clerk of the Court may be appointed to any Court of Small Causes on such salary as shall be authorized by the Governor General of India in Council. The appointment and removal of such Officer shall rest with the Court, subject to the approval of the Local Government, or, in Territories under the immediate administration of the Government of India, of the Chief Commissioner or other principal Civil Authority. The Registrar

of any Court of Small Causes may also be the Clerk of the Court.

Duties of Clerk.

45. When a Clerk is appointed to any Court of Small Causes, such Clerk shall, subject to the orders of the Court and of the Registrar if there be a Registrar, issue all Summonses, Warrants, Orders, and Writs of Execution, and keep an account of all proceedings of the Court, and shall take charge of and keep an account of all monies payable or paid into or out of Court, and shall enter an account of all such monies in a book belonging to the Court to be kept by such Clerk for that purpose.

High Court empowered to make rules of practice, &c.

46. The High Court shall have power to make and issue general rules for regulating the practice and proceedings of Courts of Small Causes, and also to prescribe forms for every proceeding in the said Courts for which it shall think that forms should be provided, and for keeping all books, entries and accounts to be kept by the Officers, and from time to time to alter any such rule or form; provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law for the time being in force.

Provisions of Section 26 of Act X of 1862, and of Act VIII of 1859 made applicable to cases cognizable under this Act.

47. The twenty-sixth Section of Act X of 1862 (*to consolidate and amend the Law relating to Stamp Duties*), and, except as hereinbefore provided, the provisions of the Code of Civil Procedure shall, so far as the same are or may be applicable, extend to all suits and proceedings under this Act.

Saving of Act XI of 1841, Section 17.

48. Nothing in the second Section of the said Act No. III of 1859, or the sixth, seventh and eighth Sections of Act No. XXII of 1864 (*to make provision for the Administration of Military Cantonments*), relating to the establishment of Courts of Small Causes in Military Cantonments, shall be held to affect so much of Act No. XI of 1841 (*for consolidating and amending the Regulations concerning Military Courts of Requests for Native Officers and soldiers in the service of the East India Company*) as declares that in places beyond the frontier of the Territories of the East India Company, actions of debt and other personal actions may be brought before the Military Courts therein mentioned, against persons so amenable as therein mentioned, for any amount of demand.

Saving of jurisdiction of Courts of Requests.

49. Nothing in this Act, nor in the sixth, seventh and eighth Sections of the said Act XXII of 1864, shall be held to affect the jurisdiction of any Court of Requests convened under the hundred and third Section of the Statute 27 Vic., cap. 3, or the corresponding Section in any other Statute for the time being in force, for punishing mutiny and desertion, and for the better payment of the Army and their quarters, or the powers of a Commanding Officer, under any such Statute to assemble such Courts.

Reference in previous Acts to Act XLII of 1860 to be read as applying to this Act.

50. When in any Act passed prior to the coming into operation of this Act reference is made to Act XLII of 1860, such reference shall be read as applying to this Act, and when any procedure is directed to be in accordance with the provisions of Act XLII of 1860, such procedure shall be deemed to be directed to be in accordance with the provisions of this Act.

Power to give a Small Cause Court Judge the powers of a Principal Sudder Ameen or a Magistrate.

51. Whenever the state of business in any Court of Small Causes, the Judge of which shall be the Judge of such Court only, is not sufficient to occupy his time fully, the Local Government may invest him within such limits as it shall from time to time appoint, in addition to his powers as such Judge, with the powers of a Magistrate as defined in the Code of Criminal Procedure, or, in the Regulation Provinces, with the powers of a Principal Sudder Ameen, or, in the Non-Regulation Provinces, with the powers of an Officer exercising the like or nearly the like powers as those of a Principal Sudder Ameen.

Power to give Small Cause Court Judge jurisdiction to hear claims under Act X of 1859.

52. In the places in which the provisions of Act X of 1859 (*to amend the Law relating to the recovery of Rent in the Presidency of Fort William in Bengal*), are in force, the Local Government may empower any Judge of a Court of Small Causes to hear and determine, under the rules contained in the said Act X of 1859 applicable to trials before a Collector, and subject to the same regular and special appeal, the claims cognizable under such Act arising within the local limits of the jurisdiction of such Court. Any Judge so empowered shall exercise all the powers of a Collector under the said Act X of 1859 except the power of hearing appeals.

Small Cause Courts to furnish records, &c., called for by Local Government or High Court.

53. Courts of Small Causes shall comply with such requisitions as may from time to time be made by the Local Government or the High Court for records, returns and statements in such form and manner as such Government or Court may deem proper.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 10th March 1865, and was referred to a Select Committee, with instructions to make their report thereon in a fortnight:—

No 9 of 1865.

A Bill to amend Act No. X of 1862 (*to consolidate and amend the Law relating to Stamp Duties*).

WHEREAS it is expedient to amend Act No. X of 1862 (*to consolidate and amend the Law relating to Stamp Duties*); It is enacted as follows:—

Act X of 1862, Section 33, repealed.

1. The thirty-third Section of the said Act No. X of 1862 is hereby repealed, and the following Section shall be read in lieu thereof:—

Governor-General in Council may lower rates of Stamp Duty on any Deeds, &c., mentioned in the Schedules, or on any class of such Deeds, &c.

2. The Governor-General of India in Council may, from time to time, by an order to be published in the Official Gazette, direct that, in the whole of the British Territories in India, or in such part thereof as may be specified in the said order, such lower rates of Stamp Duty as he shall prescribe shall be taken on all or any of the Deeds, Instruments or Writings specified in the Schedules annexed to the said Act, or on any particular class of such Deeds, Instruments or Writings, or on any of the Deeds, Instruments or Writings belonging to any such class, or he may altogether exempt the same, and in like manner, as occasion shall require, cancel or vary such order to the extent of the powers hereby given. Such cancelment or variation shall also be notified in the Official Gazette.

This Act to be taken as part of Act X of 1862.

3. This Act shall be read with and taken as part of the said Act No. X of 1862.

STATEMENT OF OBJECTS AND REASONS.

The part of the Stamp Act, which the present Bill proposes to amend, is the thirty-third Section. By that Section the Governor-General of India in Council is empowered to reduce the rate of Stamp Duty on all or any of the Deeds, Instruments and Writings described in the Schedules at the end of the Act, or altogether to exempt them from Stamp Duty. The Section, as now framed, might be supposed to be sufficiently large and comprehensive to enable the Government of India to do all that is necessary in the direction of the Section, and to meet every case in which a reduction of Stamp Duty might be deemed just or reasonable; but experience has shewn that the wording of the Section is too restrictive, and that the power given by it requires to be enlarged. An application has recently been made to the Government of India to reduce the Stamp Duty chargeable on bonds which are taken under the Indian Customs Act of 1863. These bonds are now liable to the same Stamp Duty as all other bonds or obligations for the payment of money. Compared with England the amount of Stamp Duty on bonds in this Country is high, and as levied on the class of bonds just mentioned, it is found to press heavily upon trade, and particularly upon the bonders of Salt cargoes. Looking to the circumstances under which these bonds are taken, and to the fact that actions to enforce them are very rare, the Government are disposed to view favourably the proposition that has been made for the reduction of the rate of Stamp Duty to which they are now liable, and to follow to some extent the English practice in respect of such bonds; but they are advised that, although they have power to lower the rate of Stamp Duty on bonds generally in the whole or any part of British India, they have not power to reduce the rate of Stamp Duty on any particular class of bonds. The object of the present Bill is to invest the Government of India with this power as regards not only bonds, but also all other Deeds, Instruments and Writings liable to Stamp Duty.

H. B. HARINGTON.

The 3rd March 1865.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

The following Report of the Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 10th March 1865:—

REPORT.

We the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to whom the Bill to regulate the admission, removal, and remuneration of Advocates and Attorneys in the Civil and Criminal Courts and Revenue Offices of the North-Western Provinces of the Presidency of Bengal was referred, have the honour to report that we have considered the Bill.

In consequence of the communication referred to on the introduction of the Bill, we have extended its operation to the Lower Provinces of Bengal. We have also provided for the extension of the Bill to the Territories subject to any Local Government other than the Governments of Bengal and the North-Western Provinces. The Bill may thus become applicable to the whole of British India, and we have therefore thought it desirable to make its provisions more comprehensive and definite than was deemed necessary when, as originally intended, it applied only to the North-Western Provinces.

For the words "Advocates" and "Attorneys" we have substituted "Pleaders" and "Mookhtars," as being more familiar terms and less likely to lead to confusion. We have provided that the High Court (which is defined to mean the highest Civil Court of Appeal in any place in which the Act shall operate), shall make rules not only for the qualification and removal of persons as Pleaders and Mookhtars, but also for their examination; and we propose that the Local Government shall appoint the examiners. These rules are to be submitted to the Local Government for approval. We have further provided for the enrolment of Pleaders and Mookhtars on the Books of the High Court, and for the issue and renewal of annual certificates, stamped with a stamp varying in amount with the Courts in which the holders shall practise. In this, as in other respects, we have, to

some extent, followed the provisions, though not the words, of the English Statute 6 and 7 Vic., cap. 73.

Uncertificated persons (other than Advocates and Attorneys-at-law enrolled in the High Court) practising as Pleaders or Mookhtars are to be liable to fine and imprisonment, and to be incapable of recovering fees.

The High Court is empowered to suspend or dismiss all Pleaders or Mookhtars on its Roll who shall be convicted of a criminal offence. It may also suspend or dismiss any Pleader or Mookhtar guilty of unprofessional conduct: and we have provided a procedure when a charge of such conduct is brought in a subordinate Court. On suspension or dismissal, the Pleader or Mookhtar will have to surrender his certificate.

We have struck out Sections 12 to 15, and have in lieu thereof given power to the High Court to prepare tables of fees chargeable to a party on account of the fees of his adversary's Pleader.

The provisions as to Mookhtars practising in the Revenue Courts (whom we propose to call Revenue Agents) have been made to correspond closely with those applicable to Pleaders and Mookhtars practising in the Civil Courts.

We have fixed the 1st January 1866 for the coming into operation of the Act.

We propose that the Bill as amended, together with this Report, be published for three weeks in the *Gazette of India*.

H. B. HARINGTON.
CECIL BEADON.
H. S. MAINE.
W. MUIR.
R. N. CUST.

The 7th March 1865.

AMENDED BILL.

No. 15 OF 1864.

A Bill to amend the law relating to Pleaders and Mookhtars.

Preamble.

WHEREAS it is expedient to amend the law relating to Pleaders and Mookhtars; It it enacted as follows:—

Preliminary.

Short title.

1. This Act may be cited as "The Pleaders and Mookhtars' Act, 1865."

Interpretation of terms.

2. In this Act, unless there be something repugnant or inconsistent in the subject or context—

Number.

Words importing the singular number include the plural, and words importing the plural number include the singular.

"Section."

"Section" means a Section of this Act.

"Person."

"Person" includes any Company or Association or body of persons, whether incorporated or not.

"Pleader."

"Pleader" includes Vakeels.

"Collector."

"Collector" includes Officers performing any of the duties of a Collector of land revenue.

"Magistrate."

"Magistrate" includes Officers exercising any of the powers of a Magistrate.

"Judge."

"Judge" means the presiding judicial Officer in every Civil and Sessions Court by whatever title he is designated.

"Court."

"Court" means all Courts subordinate to the High Court, including Courts of Small Causes.

"District." "District Court."

"District" means the local jurisdiction of the principal Civil Court of original jurisdiction; and "District Court" means such Court, and includes Sessions Courts, and, for the purposes of this Act, the Courts of a Commissioner and Deputy Commissioner, or any other Court in the Territories known as Non-Regulation Provinces, exercising like powers as those of a Commissioner and Deputy Commissioner or of a Civil and Sessions Judge.

"Local Government." "High Court." "Board of Revenue."

And in any part of British India in which this Act operates, "Local Government" denotes the person authorized to administer the executive Government in such part: "High Court" denotes the highest Civil Court of Appeal, and "Board of Revenue" denotes the chief revenue authority therein.

Laws repealed.

3. So far as they affect the Territories to which this Act extends, the enactments set forth in the first Schedule hereto are repealed, except so far as they repeal any other enactment, and except as to the recovery and application of any penalty for any offence which shall have been committed before the commencement of this Act.

Of Pleaders and Mookhtars.

High Court to make rules for qualification, &c., of Pleaders and Mookhtars.

4. The High Court is hereby authorized and required, within six months after this Act shall take effect in the Territories in which such Court exercises jurisdiction, to make rules for the qualification, admission, and enrolment of proper persons to be Pleaders and Mookhtars of the Courts in such Territories, for the fees to be paid for the examination, admission, and enrolment of such persons, and, subject to the provisions hereinafter contained, for the suspension and dismissal of the Pleaders and Mookhtars so admitted and enrolled. The High Court may also, from time to time, vary and add to such rules.

No person to practise as a Pleader or as a Mookhtar unless previously qualified or admitted and enrolled under this Act.

5. No person shall appear, plead, or act as a Pleader, or appear or act as a Mookhtar in any Court in the Territories to which this Act extends, unless he shall have been admitted and enrolled and shall be otherwise duly qualified to practise as a Pleader or as a Mookhtar, as the case may be, pursuant to the provisions of this Act, and unless he shall continue to be so qualified and enrolled at the time of his practising as a Pleader or Mookhtar as aforesaid: Provided that

every person who at the time at which this Act shall come into operation in any part of British India shall be, or shall be qualified to act as, a Pleader in any Court in such part, by virtue of any law, rule, or order in force therein, shall be entitled to be admitted and enrolled as a Pleader in the High Court pursuant to the provisions of this Act, without passing any examination, but subject to the conditions of any certificate or diploma held by him as to the class of Courts in which such certificate or diploma authorizes him to practise.

Local Government to appoint Examiners.

6. To facilitate the ascertainment of the qualifications mentioned in the fourth Section, the Local Government shall from time to time appoint persons to be Examiners for the purposes aforesaid, and make regulations for conducting such examinations.

Names of Pleaders and Mookhtars to be enrolled.

7. The High Court shall cause the name of every person who shall be admitted a Pleader or a Mookhtar, pursuant to the provisions of this Act, to be enrolled in books to be provided and kept for that purpose in such Court. The Courts shall take judicial notice whether a Pleader or Mookhtar is enrolled or not.

Certificates to be issued to Pleaders and Mookhtars.

8. The High Court shall cause certificates, signed by such Officer as the Court shall appoint, to be issued to persons who have been admitted and enrolled under the provisions of this Act as Pleaders or Mookhtars and are entitled to practise as such. Any such certificate when renewed, as provided in the ninth Section, may be issued and signed by the Officer so appointed, or by the Judge of the District Court within the limits of whose jurisdiction the holder of the certificate shall then ordinarily practise. Every Judge so renewing a certificate shall notify such renewal to the High Court.

Form and duration of certificate.

9. Every certificate, whether original or renewed, shall be engrossed upon stamp paper to be supplied by the person entitled to the certificate, and shall be in the form contained in the second Schedule to this Act, and shall authorize the holder to practise for the period of one year from the date of the certificate. At the expiration of such time the holder of the certificate, if desirous to continue to practise, shall renew his certificate, and on every such renewal the certificate then in the holder's possession shall be cancelled and retained by the Officer or Judge signing the renewed certificate.

Value of stamp on certificate.

10. The stamp on the certificate, whether original or renewed, shall be of the following value:—

On a certificate authorizing the holder to practise as a Pleader—

(*a.*) In the High Court and any subordinate Court—Rs. fifty:

(*b.*) In the District Courts, subordinate Courts, and Small Cause Courts—Rs. twenty-five:

(*c.*) In the Sudder Ameens' and Moonsiffs' Courts in Regulation Provinces, and in the Courts of Assistant Commissioners, Extra Assistant Commissioners and Tahsildars in Non-Regulation Provinces—Rs. fifteen:

(*d.*) In the Moonsiffs' Courts or any Court of first instance not hereinbefore mentioned—Rs. five.

On a certificate authorizing the holder to practise as a Mookhtar—

(*a.*) In the High Court and any subordinate Court—Rs. twenty-five:

(*b.*) In the District Courts, subordinate Courts, and Small Cause Courts—Rs. sixteen:

(*c.*) In the Sudder Ameens' and Moonsiffs' Courts in Regulation Provinces, and the Courts of Assistant Commissioners, Extra Assistant Commissioners and Tahsildars in Non-Regulation Provinces—Rs. eight:

(*d.*) In the Moonsiffs' Courts or any Court of first instance not hereinbefore mentioned—Rs. four.

Pleaders may practise in Criminal Courts and Revenue Offices.

11. Pleaders duly admitted and enrolled may appear, plead, and act in any Criminal Court, or before any Board of Revenue, or in any Revenue Office within the limits of the general jurisdiction of the High Court in which they are enrolled. Mookhtars duly admitted and enrolled may appear and act in any Civil Court, and may appear, plead, and act in any Criminal Court within the same limits.

Mookhtars may plead in Criminal Courts.

Persons admitted in one Court admissible to practise in other Courts of same or subordinate jurisdiction.

12. Every person who shall have been admitted to practise as a Pleader or Mookhtar under the provisions hereinbefore contained may, subject to the conditions of his certificate as to the class of Courts in which he is authorized to practise, apply to be enrolled in the Court in which he shall desire ordinarily to practise; and on such application he shall be enrolled in a book to be kept for that purpose in such Court. Any such Pleader or Mookhtar shall also be entitled, with the permission of the presiding Judge or Officer, on production of his certificate and subject to its conditions, to practise as a Pleader or Mookhtar in all other Courts or Revenue Offices within the limits of the general jurisdiction of the High Court in which he is enrolled.

Uncertificated persons practising as Pleader or Mookhtars to be liable to fine or imprisonment and to be incapable of recovering fees.

13. Any person who shall practise as a Pleader or Mookhtar in any Civil or Criminal Court or Revenue Office in the Territories to which this Act extends without having previously obtained a properly stamped certificate authorizing him so to practise, which certificate shall be then in force, shall be liable by order of such Court or the Officer at the head of such Office to a fine not exceeding ten times the amount of the stamp required by this Act to be impressed on the certificate which he should then have held, and, in default of payment, to imprisonment in the Civil Jail for a period not exceeding six calendar months. He shall also be incapable of maintaining any suit for any fee or reward for or in respect of anything done or any disbursement made by him as such Pleader or Mookhtar whilst he shall have been without such certificate.

14. The High Court may suspend or dismiss any Pleader or Mookhtar enrolled in such Court, who shall be convicted of any criminal offence.

High Court may suspend or dismiss Pleader or Mookhtar convicted of a criminal offence.

15. The High Court may also, after such enquiry as it may deem proper, suspend or dismiss any Pleader or Mookhtar who shall be guilty of fraudulent or grossly improper conduct in the discharge of his professional duty.

High Court may suspend or dismiss any Pleader or Mookhtar practising therein and guilty of unprofessional conduct.

16. If any Pleader or Mookhtar practising in any Court subordinate to the High Court, shall be charged in such subordinate Court with any such conduct as aforesaid, the Judge or Magistrate of the Court, as the case may be, shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration. Such copy and notice shall be served upon the Pleader or Mookhtar at least twenty days before the day so appointed; and on such day, or on any subsequent day to which the enquiry may be adjourned, the Court shall receive all evidence properly tendered by or on behalf of the party bringing the charge or by the Pleader or Mookhtar, and shall proceed to adjudicate on the charge. If the Judge or Magistrate shall find the charge established and consider that the Pleader or Mookhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court, and the High Court shall proceed to acquit, suspend or dismiss the Pleader or Mookhtar. Such report when made by any other than the District Judge shall be submitted to the High Court through the District Judge, who shall accompany the report with any remarks that he may think necessary and an expression of his own opinion on the case. Such report when made by a Magistrate subordinate to the Magistrate of the District shall be submitted through the Magistrate of the District to the District Judge, and shall be accompanied by the remarks and opinion of the Magistrate of the District. The Judge or Magistrate may, pending the investigation and the orders of the High Court, suspend the Pleader or Mookhtar from practising as such in his Court.

Procedure when charge of unprofessional conduct is brought in a subordinate Court.

Suspension pending investigation.

17. The High Court, in any case in which a Pleader or Mookhtar shall have been acquitted under the last preceding Section otherwise than by an order of the High Court, may call for the record and pass such order thereon as shall seem fit.

High Court may call for the record in case of acquittal under Sec. 16.

18. When any Pleader or Mookhtar shall be suspended or dismissed under any of the foregoing Sections, he shall forthwith deliver up his certificate to the Court in which he was practising at the time he was so suspended or dismissed. If he fail to make such delivery, he shall be liable, by order of such Court, to a fine not exceeding two hundred Rupees, and, in default of payment, to imprisonment in the Civil Jail for a term not exceeding three calendar months. If during such suspension, or after such dismissal, he shall practise as a Pleader or Mookhtar in any Court to which this Act extends, he shall be liable, by order of such Court, to a fine not exceeding five hundred Rupees, and, in default of payment, to imprisonment in the Civil Jail for a term not exceeding six calendar months.

Dismissed Pleader or Mookhtar to surrender his certificate.

Of Agents practising in the Revenue Offices.

19. No person other than a Pleader duly qualified under the provisions hereinbefore contained, or other than persons authorized by such general or special powers of attorney as are hereinafter mentioned, shall practise as an Agent in any proceeding before the Board of Revenue or in any Office subordinate to such Board, unless he shall have obtained a certificate from such Board in the manner hereinafter provided. Any such certificate, when renewed as provided in the twenty-first Section, may be issued and signed by the Secretary of the Board or by any other Officer authorized by the Board in that behalf, or by the Collector of the District within the limits of whose jurisdiction the holder of the certificate shall practise at the time of renewal.

No person to act as Agent in Revenue Offices or Magistrates' Courts, unless qualified as hereinprovided.

20. The Board of Revenue shall cause the name of every person (hereinafter called a Revenue Agent) who shall have obtained such certificate to be enrolled in a book to be provided and kept for that purpose by the Secretary of the Board or other Officer authorized by the Board in that behalf.

Names of Revenue Agents to be enrolled.

21. Every such certificate, whether original or renewed, shall be engrossed upon stamp paper to be supplied by the person entitled to the certificate, and shall be in the form contained in the third Schedule to this Act, and shall authorize the holder to practise for the period of one year from the date of the certificate. At the expiration of such time, the holder of the certificate, if desirous to continue to practise, shall renew his certificate, and on every such renewal the certificate then in his possession shall be cancelled and retained by the Officer or Collector signing the renewed certificate. Every Collector so renewing a certificate shall notify such renewal to the Board of Revenue.

Form of Certificate.

22. The stamp on such certificate, whether original or renewed, shall be of the value of five Rupees.

Value of stamp.

23. The Board of Revenue shall, before they shall grant any such certificate, satisfy themselves of the qualifications and fitness of the person applying for the same; and they are hereby authorized and required within six months after the commencement of this Act in the part of British India in which such Board is situate, to prepare rules for the purpose of defining what qualifications shall be required for such certificate.

Revenue Board to ascertain qualifications of Revenue Agents.

24. To facilitate the ascertainment of the qualifications mentioned in the last preceding Section, the Local Government shall from time to time appoint persons to be examiners for the purposes aforesaid and make regulations for conducting the examinations.

Local Government to appoint examiners.

Enrolment of Revenue Agent in Office in which he shall usually practise.

25. Every person who shall have been admitted to practise as a Revenue Agent under this Act, may apply to be enrolled in the Office in which he shall desire ordinarily to practise, and on such application he shall be enrolled in a book to be kept for that purpose in such Office. Any such Revenue Agent shall also be entitled, with the permission of the Officer at the head of the Office, on production of the certificate held by him, to practise as a Revenue Agent in all other Revenue Offices within the limits of the Territory of the Board of Revenue in which he is enrolled.

Board of Revenue may suspend or dismiss Revenue Agent convicted of criminal offence.

26. The Board of Revenue may suspend or dismiss any Revenue Agent practising in any Revenue Office who shall be convicted of any criminal offence.

Board may suspend or dismiss Revenue Agent practising before it and guilty of unprofessional conduct.

27. The Board of Revenue may also, after making such enquiry as it may think proper, suspend or dismiss any Revenue Agent practising before such Board, who may be guilty of fraudulent or grossly improper conduct in the discharge of his professional duty.

Procedure when a Pleader is charged with unprofessional conduct before the Board of Revenue.

28. If any Pleader shall, while practising before such Board, be charged with fraudulent or grossly improper conduct in the discharge of his professional duty, the Board shall report the same to the High Court, and the High Court, after making such enquiry as it shall think fit, shall proceed to acquit, suspend or dismiss the Pleader, and shall thereupon send notice of such acquittal, suspension or dismissal to the said Board. Pending the investigation and the receipt of the notice last aforesaid, the Board may suspend the Pleader from practising before it.

Procedure when Pleader or Revenue Agent is so charged in any Office subordinate to Board of Revenue.

29. If any Pleader or Revenue Agent shall be charged with any such conduct in any Office subordinate to the Board of Revenue, the Officer at the head of such Office shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration. Such copy and notice shall be served upon the person charged, at least twenty days before the day so appointed; and on such day or on any other day to which the enquiry may be adjourned, the Officer shall receive all evidence properly tendered by or on behalf of the person bringing the charge, or by the person charged, and shall proceed to adjudicate on the charge. If the Officer find the charge established, and consider that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof and report the same to the Board of Revenue, and the Board shall, if the person charged be a Revenue Agent, proceed to acquit, suspend or dismiss him, and shall, if he be a Pleader, forward such report to the High Court, in which he is enrolled, which Court, after making any further enquiry which it shall think necessary, shall proceed to acquit, suspend or dismiss the person charged, and shall thereupon send notice of such acquittal, suspension or dismissal to the Board by whom such report was forwarded. If the Officer shall be subordinate to the Commissioner of a Division, he shall forward the report through such Commissioner, who shall accompany the same with any remarks that he may think necessary and an expression of his own opinion on the case.

Power to Board to call for record.

30. The Board of Revenue in any case in which a Pleader or Revenue Agent shall have been acquitted under the last preceding Section otherwise than by an order of the High Court or Board, may call for the record and pass such order thereon as shall seem fit, subject, in the case of a Pleader, to the provisions of the twenty-eighth Section.

Report to High Court when dismissed Revenue Agent is also an enrolled Mookhtar.

31. Whenever a Revenue Agent who has been dismissed or suspended by order of the Board of Revenue shall also be a Mookhtar enrolled under the provisions of this Act, the Board of Revenue shall forward a report of the case to the High Court in which he shall be enrolled; and such Court, after making any further inquiry which it may think necessary, may suspend or dismiss him as such Mookhtar.

Section 18 to apply to Vakeel or Mookhtar suspended or dismissed under Sections 28, 29 or 31.

32. The provisions of the eighteenth Section shall apply to any Pleader or Mookhtar suspended or dismissed under the twenty-eighth, twenty-ninth or thirty-first Section.

Dismissed Revenue Agent to surrender his certificate.

33. When a Revenue Agent shall be suspended or dismissed under any of the foregoing Sections, he shall forthwith deliver up his certificate to the Board of Revenue or the Officer at the head of the Office suspending or dismissing him. If he fail to make such delivery, he shall be liable by order of the Board or such Officer as aforesaid to a fine not exceeding two hundred Rupees, and, in default of payment to imprisonment in the Civil Jail for a term not exceeding three calendar months.

Penalty on unqualified person practising as Agent.

34. Every person who shall practise as a Revenue Agent in any Revenue Office in the Territories to which this Act extends, without holding a certificate then in force and without being duly qualified to practise as herein provided, shall be liable by order of the Board or Officer in whose Office he shall so practise to a fine not exceeding two hundred Rupees, and, in default of payment, to imprisonment in the Civil Jail for a period which may extend to three calendar months. The person so fined as aforesaid shall be incapable of maintaining any suit for any fee or reward for or in respect of any thing done or any disbursement made by him in the course of such practising.

Persons authorized by general or special powers of attorney may be Agents.

35. Nothing hereinbefore contained shall prevent any person from employing any other person, though not a Revenue Agent enrolled under the provision of this Act, to commence and prosecute all business or any particular business in which the employer may be concerned in any Revenue Office: Provided that the person so commencing and prosecuting all or any such business as aforesaid shall hold a general or special power of attorney, as the case may be, in that behalf, from the person so employing him; Provided also that no person shall act as last aforesaid unless he shall have

received the general or the special sanction, as the case may be, in that behalf of the Board of Revenue or other Officer authorized by the Local Government to grant such sanction.

Sanction may be revoked or suspended.

36. Such general or special sanction, as the case may be, may at any time be revoked or suspended by the Board of Revenue or other Officer as aforesaid by whom it was granted; and any person who, having received such sanction, shall practise under the nineteenth Section during the continuance of such revocation or suspension, shall be liable to the penalties and incur the disabilities mentioned in the thirty-third Section.

Of the Remuneration of Pleaders and Revenue Agents.

High Court and Revenue Board to fix fees on Civil and Revenue proceedings.

37. The High Court shall from time to time fix and regulate the fees which shall be payable upon all proceedings in the Courts of Civil Judicature, by any party in respect of the fees of his adversary's Pleader; and the Board of Revenue shall from time to time fix and regulate the fees which shall be payable upon all proceedings in the Revenue Courts and Offices by any party in respect of the fees of his adversary's Pleader or Revenue Agent. Tables of the fees so fixed shall be published in the Official Gazette.

Section 37 not to apply to Agents appointed under Section 35.

38. The provisions of the last preceding Section shall not be applicable to Agents appointed under the thirty-fifth Section.

Clients may make private agreements with their Pleaders, Mookhtars or Revenue Agents as to remuneration.

39. Parties employing Pleaders, Mookhtars or Revenue Agents in any Court or Office to which this Act extends, shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and it shall not be necessary to specify such agreement in the power under which such Pleaders, Mookhtars, or Revenue Agents for the time being act. Such agreements shall not be enforced otherwise than by regular suits.

Miscellaneous.

Suitors may appear, &c., for co-suitors.

40. Any suitor may appear, plead, and act in any suit, appeal on other proceeding on behalf of any co-suitor. And in all Criminal Courts, any person defending a case may (with the permission of the presiding Judge or Magistrate) employ any other person, though not a Pleader or Mookhtar duly qualified under the provisions of this Act, to assist him in such defence. But no suitor nor person so appearing, pleading, acting or assisting, shall be entitled to recover any fee or reward therefor.

Prosecutors or prisoners may employ any assistant.

Fees not recoverable by such persons.

Rules to be submitted for approval of Local Government.

41. The rules mentioned in the fourth and twenty-third Sections and all variations of and additions to such rules, shall be submitted to the Local Government for approval, and, when such approval shall have been obtained, they shall be published in three consecutive numbers of the Official Gazette.

Advocates enrolled in a High Court may plead in any Court other than a High Court in which they are not enrolled.

42. Every person now or hereafter enrolled as an Advocate on the Roll of any High Court shall, notwithstanding anything hereinbefore contained, be entitled as such to practise in any Court in British India other than a High Court on whose Roll he is not enrolled, subject nevertheless to the rules in force relating to the language in which the Court is to be addressed by Pleaders.

Attorney of a High Court may plead in any Court not a High Court.

43. Every person now or hereafter enrolled as an Attorney on the Roll of any High Court shall, notwithstanding anything hereinbefore contained, be entitled as such to plead in any Court of British India other than a High Court, subject nevertheless to the rules referred to in the last preceding Section.

Sections 8 to 19 to apply to Vakeels of the High Court.

44. On and from the first day of January 1866, the provisions contained in Sections eight to nineteen both inclusive shall, *mutatis mutandis*, apply to all persons then and thereafter enrolled as Vakeels on the Roll of any High Court under the Letters Patent constituting such Court.

Pleaders in subordinate Courts may apply to District Judge for enrolment.

45. Any person who at the time that this Act shall come into operation in any part of British India shall be practising as a Pleader in any Court other than the High Court in such part, and who shall wish to be enrolled as a Pleader under this Act may apply to be so enrolled to the District Judge, who shall forward the application to the High Court, and such Court shall cause the applicant to be enrolled under the provisions of this Act, and shall authorize the said Judge to grant a certificate to the applicant as provided in the eighth, ninth, and tenth Sections.

Fines subject to revision.

46. Every order for imposing a fine, which shall be passed under this Act, shall be subject to revision by the High Court if the order shall have been passed by a Court subordinate to the High Court, or by the Board of Revenue, if the order shall have been passed by an Officer subordinate to such Board.

Commencement and extent of Act.

47. This Act shall take effect in the territories under the Governments of the Lieutenant Governors of Bengal and the North-Western Provinces, respectively, on the first day of January 1866, and may be extended by order of any other Local Government to any part of the territories subject to such Government. Every order issued under this Section shall be published in the Official Gazette.

Repeal of inconsistent enactments in Madras, Bombay, the Punjab, &c.

48. From the date on which this Act shall take effect in the territories mentioned or referred to in the last preceding Section, so much of the Regulations, Acts, or Rules for the time being in force in such Territories as is in any way inconsistent with, or repugnant to, any of the provisions of this Act, shall cease to have effect in the Territories in which it shall so take effect.

FIRST SCHEDULE.

Regulations and Acts and parts of Regulations and Acts repealed so far as they affect the territories to which this Act extends.

Number and date of Regulations.	What Code.	Title.	Extent of Repeal.
Regulation XXVII, 1814.	Bengal Code.	For reducing into one Regulation, with amendments and modifications, the several rules which have been passed regarding the office of Vakeel or Native Pleader in the Courts of Civil Judicature.	So much as has not already been repealed.
Regulation VII, 1822.	Bengal Code.	For declaring the principles according to which the settlement of the land revenue in the Ceded and Conquered Provinces, including Cuttack, Puttaspore, and its dependencies, is to be hereafter made, and the powers and duties belonging to Collectors or other officers employed in making, revising, or superintending Settlements; for continuing, with certain exceptions, the existing leases within the said Provinces, for a further term of five years; for defining, settling, and recording the rights and obligations of various classes and persons possessing an interest in the land, or in the rent or produce thereof; and for vesting the Revenue Authorities with judicial cognizance in certain cases of suits and claims relating to land, the rent, and produce of land.	Section xxv.
Regulation IX, 1825.	Bengal Code.	For extending the operation of Regulation VII, 1822; for authorizing the Revenue Authorities to let in farm estates under temporary leases, on the default of the Malguzars, or to hold the same khas for a term of years; for modifying and adding to the rules contained in Regulation II, 1819; and for making certain other amendments in the existing Regulations.	So much of Clause 9, Section v, as provides that Section xxv of Regulation VII of 1822, shall be applicable to cases investigated by Collectors under the rules of Regulation II of 1819, or under the provisions of Regulation IX of 1825.

Number and date of Acts.	Title.	Extent of Repeal.
Act I of 1846.	For amending the law regarding the appointment and remuneration of Pleaders in the Courts of the East India Company.	The whole.
Act XVIII of 1852.	To amend the law relating to Pleaders in the Lower Provinces of the Presidency of Bengal.	The whole.
Act XX of 1853.	To amend the law relating to Pleaders in the Courts of the East India Company.	The whole.
Act X of 1859.	To amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	So much of Section lxxi. as directs that no fee for any Agent shall be charged as part of the costs of suit in any case under the said Act, and the whole of Section cxlix.

SECOND SCHEDULE.

Form of Pleader or Mookhtar's Certificate.

Stamp

Pursuant to "The Pleaders and Mookhtars' Act, 1865," I hereby certify that A. B. Pleader [*or* Mookhtar], whose place [*or* places] of business is [*or* are] at hath this day delivered and left with me a declaration in writing signed by him and containing his name and place [*or* places] of business and the Court [*or* Courts] of which he is admitted a Pleader [*or* Mookhtar] together with the year in which he was so admitted; and I hereby further certify that he is duly enrolled in the High Court of Judicature at Fort William in Bengal [*or* the Sudder Court of the North-Western Provinces, *or as the case may be*] and that he is entitled to practise as a Pleader [*or* Mookhtar] in the District Courts, subordinate Courts, and Small Cause Courts [*or* the Sudder Court of the North-Western Provinces, and any subordinate Court, or the Sudder Ameens' Courts, *or* the Moonsiffs' Courts *as the case may be*] and to practise as a Revenue Agent before the Board of Revenue of the Lower Provinces [*or* of the North-Western Provinces, *or as the case may be*] for the period of one year from the date hereof. Given under my hand this day of 186 .

C. D.

Registrar of the High Court of Judicature at Fort William in Bengal [*or* of the Sudder Court of the North-Western Provinces, *or as the case may be.*]

THIRD SCHEDULE.

Form of Revenue Agent's Certificate.

Stamp

Pursuant to "The Pleaders and Mookhtars' Act, 1865," I hereby certify that A. B. of is entitled to practise as a Revenue Agent before the Board of Revenue of the North-Western Provinces [*or* of the Lower Provinces, *or as the case may be*], and in any office subordinate thereto in such Provinces, for the period of one year from the date hereof. Given under my hand this day of 186 .

C. D.

Secretary to the Board of Revenue of the North-Western Provinces [*or* the Lower Provinces, *or as the case may be.*]

HOME DEPARTMENT.

No. 2452.

Fort William, the 11th March 1865.

NOTIFICATIONS.

Captain F. Fitzroy, R. A., Superintendent of the Pegu Survey, has obtained one month's leave to enable him to visit the Presidency for the purpose of appearing before a Medical Board, preparatory to applying for leave of absence to Europe.

Captain Fitzroy's services are placed at the disposal of the Military Department from the date on which he may give over charge of his office.

No. 2454.

The Governor General in Council has been pleased to grant to Mr. T. H. Cowie, Advocate General, leave of absence, on medical certificate, for nine months, under Section 11 of the Covenanted Absentee Rules, from the 23rd instant.

No. 2457.

The 15th March 1865.

The Governor General in Council has been pleased to make the following appointments:—

Mr. Joseph Graham, Standing Counsel to the Government of India, to officiate as Advocate General.

Mr. H. A. Eglinton, to officiate as Standing Counsel to the Government of India, vice Mr. Graham.

No. 2458.

The 16th March 1865.

The Governor General in Council is pleased to re-attach to the Bengal Division of the Presidency of Fort William, Mr. H. A. R. Alexander, of the Civil Service, who returned from furlough on the 14th instant.

No. 2459.

The Governor General in Council is pleased to attach Mr. M. S. Champneys, of the Civil Service, reported qualified for the public service, to the North-Western Provinces, the Punjab, and Oude, and to place his services at the disposal of the Foreign Department.

No. 2460.

Messrs. J. W. Neill, R. F. Rampini, and G. Smeaton, Junior Civil Servants, having, within the prescribed interval after arrival in India, passed examinations in two languages, have each been presented with the authorized donation of Rs. 800.

No. 2461.

The Reverend E. J. Tandy (Chaplain of Fyzabad) is appointed Chaplain of Lucknow Cantonment, in succession to the Reverend H. B. Burney.

No. 2462.

The Reverend W. Ayerst (Chaplain of Roy Bareilly) is appointed Chaplain of Fyzabad.

No. 2463.

The Reverend J. B. Patch (Chaplain of Tounghoo) is appointed Chaplain of Roy Barrielly, in succession to the Reverend W. Ayerst.

No. 2464.

The Reverend A. O. Hardy, M. A., appointed a Junior Chaplain on the Bengal Establishment, reported, on the 3rd instant, his arrival at the Sand Heads on the 2nd idem.

2. The Right Reverend the Lord Bishop has appointed the Reverend A. O. Hardy to be His Lordship's Domestic Chaplain.

No. 2466.

The services of the Reverend T. C. Matthews, Chaplain of Thyet Myoo, are placed at the disposal of the Government of the Punjab, with effect from the date of his quitting his station.

No. 2466 A.

The services of the Reverend W. G. Cowie, Junior Chaplain on the Bengal Establishment, are placed at the disposal of the Government of the Punjab.

No. 2470.

The 17th March 1865.

The Governor General in Council is pleased to invest Mr. C. Grant, Officiating Deputy Commissioner of Jubbulpore, with the powers described in Section I of Act XV of 1862.

No. 2472.

Lieutenant Colonel D. C. Vanrenen, Revenue Surveyor, 2nd Division, Oudh, is allowed one month's privilege leave of absence, from the date on which he may avail himself of the same.

Lieutenant A. D. Butter, Assistant Revenue Surveyor, 1st Division, Oudh, is appointed to take charge of the 2nd Division, Oude Revenue Survey, during the absence on leave of Lieutenant Colonel D. C. Vanrenen, or until further orders.

No. 2474.

Mr. E. Little, Sub-Assistant Revenue Surveyor, 3rd Class, in the 1st Division, Central Provinces, is allowed two months' privilege leave of absence, from the 1st of January 1865.

No. 2476.

Mr. N. Garstin, Assistant District Superintendent, assumed charge of the Office of District Superintendent of Police, Hurdui, in the forenoon of the 24th ultimo.

No. 2478.

Mr. N. Cumberlege, Assistant Superintendent of Police, Berar, reported his arrival at Akola on the 3rd February 1865, and assumed charge of his appointment on the afternoon of the same date.

No. 2480.

The Governor General in Council is pleased to invest the under-mentioned native gentlemen of the Nimar District, in the Central Provinces, respectively, with the powers of Subordinate Magistrates of the 1st and 2nd Classes, described in Section 22 of the Code of Criminal Procedure, to be exercised within the jurisdictions noted opposite their names:—

1st Class.

1. Azeezool Rehman, Kazee of Boorhanpore.	In the city of Boorhanpore, and within a circle of 10 miles (from that city) in the Boorhanpore Tehseelee Division.
2. Huree Kurum, Principal Mundloee in the Khundwah Pergunnah.	Khundwah Pergunnah.
3. Rana Keerut Singh, Zemindar of Burwai.	In Burwai Pergunnah, exclusive of Onkur Mandata, Godurpoora, and Bukulgurh Sylanee.
4. Rao Sirdar Singh, Chief of Mandata.	In the town of Onkur Mandata and the village of Godurpoora.

2nd Class.

5. Rao Oomed Singh, Zemindar of Sylanee.	In Sylanee and Muslai, his jageer villages.
6. Rana Nuhur Singh, Zemindar of Peeplode.	Peeplode Pergunnah.
7. Onkur Singh, Mundloee of Dhurgaon.	Dhurgaon Pergunnah.
8. Rao Dowlut Singh, Zemindar of Bhamgurh.	Bhamgurh Pergunnah.

No. 2482.

Leave of absence for four weeks, from the 15th instant, is granted to Mr. C. A. R. Browning, B. A., Officiating Director of Public Instruction, Central Provinces, preparatory to his applying for furlough to Europe, on medical certificate.

No. 2484.

The Governor General in Council is pleased to grant to the Reverend H. B. Burney, Chaplain of Lucknow Cantonment, leave of absence for six months, under Section 9 of the Military Rules, with effect from the 13th instant.

No. 2485.

Erratum.—In Notification No. 1984 of this Department, published at page 268 of the *Gazette of India*, notifying the return of the Hon'ble Sir Barnes Peacock, for "*13th ultimo*" read "*12th ultimo.*"

No. 2489.

Mr. R. C. A. Hamilton, District Superintendent of Police in Oude, has obtained six months' leave to Europe on private affairs, from the 15th proximo, under para. 12 of the new Uncovenanted Service Absentee Rules.

E. C. Bayley,
Secy. to the Govt. of India.

No. 2486.

ELECTRIC TELEGRAPH.

Fort William, the 16th March 1865.

NOTIFICATION.

In publishing the subjoined Extract from a Despatch from the Right Hon'ble the Secretary of State for India, communicating the intelligence of the death of Lieutenant Colonel Patrick Stewart, R. E., the Governor General in Council desires to express the deep regret which the loss of this able and distinguished public servant has caused to the Government of India :—

Extract para. 1 *of the Secretary of State's Telegraph Despatch No.* 1, *dated 26th January* 1865.

PARA. 1.—"It is with deep concern that I announce to your Excellency the decease of Lieutenant Colonel Patrick Stewart, R. E., which took place at Constantinople on the 16th instant. In him the State has been deprived of a servant of distinguished ability and of unsurpassed activity and zeal."

By order of the Governor General in Council,

E. C. BAYLEY,

Secy. to the Govt. of India.

FOREIGN DEPARTMENT.

No. 115.

MILITARY.

Fort William, the 16th March 1865.

His Excellency the Viceroy and Governor General in Council is pleased to make the following appointments :—

Colonel H. Daly, C. B., Commandant of the Central India Horse, to officiate as Political Assistant for Western Malwa at Augur, in addition to his other duties.

Captain C. Martin, 2nd in Command of the 2nd Corps Central India Horse at Goona, to officiate, in addition to his other duties, as Political Assistant at Goona, in succession to Colonel Daly.

Captain C. James, 2nd Squadron Officer, 2nd Regiment, to officiate, on return from Europe, as 2nd in Command, 1st Corps Central India Horse, during Lieutenant Bradford's absence.

Captain F. P. Luard, Officiating 2nd Squadron Officer, 1st Corps Central India Horse, to officiate as 2nd in Command of the Corps, pending the arrival of Captain James.

No. 118.

The 17th March 1865.

The Governor General in Council is pleased to sanction the following promotions in the Meywar Bheel Corps :—

Jemadars Dowlut Meer Khan and Baleea to be Subadars from the 1st December 1864.

Havildars Hurpursad Opadia and Mungleea to be Jemadars from the 1st December 1864.

No. 120.

Lieutenant E. R. C. Bradford, Commanding 1st Regiment Central India Horse, is granted one month's leave of absence from the 2nd of March, or from the date of his departure from Augur, preparatory to applying for furlough to Europe on medical certificate.

POLITICAL.

No. 221.

The 11th March 1865.

The services of Captain E. P. Gurdon, Superintendent of Myhere, in Central India, are re-transferred to the Punjab Government from the 23rd instant.

No. 224.

The 13th March 1865.

Major G. B. Malleson is appointed to officiate as Agent, Governor General, with the King of Oudh, and Superintendent of Political Pensions in the room of Lieutenant Colonel C. Herbert, who has proceeded to England on special duty.

Major Malleson received charge of the above offices from Lieutenant Colonel Herbert on the forenoon of the 7th March.

GENERAL.

The 13th March 1865.

No. 566.

Major E. B. Ramsay, Military Assistant to the Commissioner of Mysore, embarked for England on the French Steamer "Erymanthe" on the 7th February 1865.

No. 567.

The following Junior Civil Servants who have been appointed to Oudh, reported their arrival at Lucknow on the dates specified opposite their names :—

Mr. C. W. McMinn	-	13th February	1865.
„ J. C. Williams	-	13th „	„
„ J. Woodburn	-	15th „	„
„ J. T. Crawford	-	17th „	„
„ C. Steinbelt	-	25th „	„

No. 568.

Mr. E. Bickers, Extra Assistant Commissioner of Lucknow, has obtained privilege leave of absence for one month, from the 8th instant, or from the subsequent date on which he may avail himself of it.

No. 570.

Assistant Surgeon M. W. Mott, M. D., in medical charge of the Bhurtpore Agency, has obtained privilege leave of absence for three months, from the 15th April next, or from such date as he may avail himself of it.

No. 572.

Surgeon Major J. Kirkpatrick, M. D., Surgeon to the Mysore Commission, has been granted privilege leave of absence for 30 days, from date of departure from Bangalore.

No. 574.

1st Class Native Doctor Behary Sing is appointed to the medical charge of the Political Agency at Munnipore, vice Native Doctor Goluck Chunder Sen, who has resigned the service.

No. 577.

Captain S. S. Boulderson, Assistant Settlement Officer, Lucknow, has obtained privilege leave of absence for three months, from the 1st May next, or from the subsequent date on which he may avail himself of it.

No. 580.

Major T. M. McHutchin, Deputy Superintendent, Mysore District, has obtained privilege leave of absence for two months from the 18th instant.

No. 582.

Mr. W. H. Kerr, Superintendent of Coorg, has obtained special leave of absence for six months beyond the limits of India on urgent private affairs, together with the usual preparatory leave to reach the port of embarkation.

No. 602.

The 16th March 1865.

Mr. H. W. Beddy, Officiating Deputy Commissioner, 3rd Grade, Sandoway, British Burmah, resumed charge of the Treasury at Sandoway from Tseekay Moung Htoon on the afternoon of the 14th of January.

Captain A. R. McMahon, Officiating Deputy Commissioner, 4th grade, British Burmah, received charge of the District and Treasury at Ramree from Major E. M. Ryan on the afternoon of the 31st of January.

No. 604.

Lieutenant J. Low, Assistant Commissioner of Oonao, has obtained leave for twenty-four days, from the 15th April next, or from the subsequent date on which he may avail himself of it, preparatory to applying for leave to Europe on medical certificate.

No. 606.

Lieutenants D. W. Laughton and A. G. W. Hemans, of the Hyderabad Contingent, are appointed Assistant Commissioners of the 3rd Class, in the Berars. The appointments to have effect from the 29th December last.

No. 608.

Lieutenant W. Hill, 3rd Class Deputy Superintendent of the Chittledroog District, in Mysore, rejoined his duty from sick leave to Europe on the 1st February 1865.

No. 609.

Mr. E. Richardson, Extra Assistant Commissionor, 1st grade, British Burmah, assumed charge of the Office of Extra Assistant Commissioner, 1st Grade, at Prome, on the afternoon of the 2nd of February.

No. 611.

Mr. W. Oldham, Officiating Deputy Commissioner of Fyzabad in Oudh, availed himself, on the afternoon of the 16th February, of the preparatory leave granted to him in G. O. No. 722, dated 20th July last, making over charge of his Office to Mr. T. H. Kavanagh, v. c., Assistant Commissioner.

Mr. Kavanagh officiated as Deputy Commissioner from the afternoon of the 16th to the afternoon of the 25th February.

Mr. E. B. Thornhill assumed charge of the Office of Officiating Deputy Commissioner of Fyzabad from Mr. Kavanagh on the afternoon of the 25th idem.

No. 612.

The Governor General in Council is pleased to appoint Mr. F. O. Mayne, C. B., to be Commissioner of the Baiswarra Division, in Oudh, vice Mr. Charles Currie.

No. 615.

GENERAL.

Lieutenant F. W. Grant, Assistant Commissioner, 2nd Class, in the Hyderabad Assigned Districts, assumed charge of his Office on the afternoon of the 17th February 1865.

No. 616.

Captain E. R. Twyford, District Superintendent of Police, Central Provinces, is appointed to officiate as Deputy Commissioner of Baitool as a temporary arrangement, with effect from the date on which he took over charge from Captain G. Warner.

No. 619.

Captain H. Fraser, 2nd Assistant to the Resident at Hyderabad, has obtained the usual preparatory leave, from the 21st ultimo, to proceed to Bombay for the purpose of applying for leave to Europe on urgent private affairs.

Lieutenant W. Tweedie, Adjutant, 1st Cavalry Hyderabad Contingent, is appointed to officiate for Captain Fraser during that Officer's absence.

No. 627.

The 17th March 1865.

Erratum.—In G. O. No. 1560, dated 13th December 1864, for Baboo "Bhugwut Doss," read "Bhugwut Mahuntee."

No. 630.

Mr. W. H. Kerr, Superintendent of Coorg, made over charge of his Office and Treasury to Mr. Assistant Superintendent C. Soobiah, on the afternoon of the 17th ultimo.

Lieutenant R. A. Cole, Superintendent of Police, Bangalore Cantonment, is appointed to officiate as Superintendent of Coorg during Mr. Kerr's absence.

Lieutenant W. Hill, Deputy Superintendent of the Chittledroog District, is appointed to officiate as Superintendent of Police, Bangalore Cantonment.

No. 632.

Mr. J. C. Colvin, Officiating Deputy Commissioner of Seetapore, in Oudh, has obtained twenty-five days' preparatory leave from the 13th April 1865, or from the subsequent date on which he may avail himself of it.

No. 634.

Captain J. Loch, Assistant Commissioner of Nagpore, has obtained privilege leave of absence for three months, from the 20th instant, or from the date on which he may avail himself of it.

No. 636.

The services of Assistant Surgeon D. Kearney, in Civil medical charge of Shoaygyeen, in British Burmah, are replaced at the disposal of the Madras Government.

No. 639.

Mr. J M. C. Steinbelt, c. s., lately transferred to the Oudh Commission, is appointed an Assistant Commissioner of the 3rd Grade, on the permanent Establishment, vice Mr. H. Gibson, promoted.

A. Colvin,
Offg. Under Secy. to the Govt. of India.

FINANCIAL DEPARTMENT.

No. 1514.

Fort William, the 15th March 1865.

Notification.

Mr. H. D. Sandeman, to be Deputy Auditor and Accountant General, Bengal.

E. H. Lushington,
Secy. to the Govt. of India.

MILITARY DEPARTMENT.

Fort William, the 11th March 1865.

No. 252 *of* 1865.—His Excellency the Governor General in Council is pleased to make the following appointment :—

Judge Advocate General's Department.

Major J. N. Young, Deputy Judge Advocate General, Lahore Division, to officiate as Deputy Judge Advocate General at Army Head Quarters, during the absence of Lieutenant Colonel Maisey on sick leave, or until further orders.

No. 253 *of* 1865.—Assistant Surgeon James Charles Dickinson, of the Medical Department, is permitted to resign the service, subject to Her Majesty's approval.

The 13th March 1865.

No. 254 *of* 1865.—With reference to the Notification from the Foreign Department, No. 196 of the 6th instant, the services of Captain W. Bannerman, of the 3rd Bombay Native Infantry, are re-placed at the disposal of the Government of Bombay.

No. 255 *of* 1865.—The under-mentioned Officer is permitted to proceed to Europe on furlough on private affairs :—

Captain Alfred Blunt, of the Bengal Staff Corps. } For 2 years.

No. 256 *of* 1865.—Magazine Sergeant William Ross, having passed the prescribed examination, is appointed to officiate as Sub-Conductor in the Ordnance Department to fill an existing vacancy.

The 14th March 1865.

No. 257 *of* 1865.—The following Extracts from the *London Gazettes* of the 24th and 31st January 1865, are published for general information :—

War Office, *Pall-Mall*,
24th January 1865.

Brevet.

The under-mentioned promotions to take place consequent on the decease of Lieutenant General Matthew Coombs Paul, Bengal Infantry, on 7th January 1865 :—

Major General James Bell, Madras Infantry, to be Lieutenant General, dated 8th January 1865.

Colonel William Fergusson Beatson, Bengal Infantry, to be Major General, dated 8th January 1865.

The under-mentioned Officers, who have retired on full pay, to have a step of honorary rank as follows :—

Colonel Saunders Alexius Abbott, Bengal Infantry, to be Major General, dated 24th January 1865.

Lieutenant Colonel Joseph Charles Coley, Bombay Infantry, to be Colonel, dated 24th January 1865.

Major Christopher Buckle, Bombay Staff Corps, to be Lieutenant Colonel, dated 24th January 1865.

Captain Richard Francis Grindall, Bengal Infantry, to be Major, dated 24th January 1865.

War Office, *Pall-Mall*,
31st January 1865.

Brevet.

Captain Thomas Gilbert Kennedy, Bengal Staff Corps, to be Major, dated 19th January 1865.

No. 258 *of* 1865.—The promotion of the under-mentioned Officers (retired, deceased, &c., &c.) published in Government General Order No. 892 of the 11th November 1864, is hereby cancelled, under instructions from the Right Hon'ble the Secretary of State :—

PROMOTIONS.

Corps.	Rank and Names.	To what rank Promoted.	From what Date.
Late 59th N. I.	Major G. W. Stokes, (retired, 31st December 1861) ...	Lt. Colonel	18th Feb. 1861
,, 51st N. I.	,, W. Lamb, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 23rd N. I.	,, E. F. Smith, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 11th N. I.	,, W. Lydiard, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 29th N. I	,, G. W. Williams, C. B., (retired, 31st December 1861) ..	Ditto ...	Ditto.
,, 4th E. L. C.	,, T. F. B. Beatson, (retired, 31st December 1861) ..	Ditto ...	Ditto.
,, 46th N. I.	,, H. S. Grimes, (retired, 28th February 1861) ...	Ditto ...	Ditto.
,, 42nd N. I.	,, D. Gaussen, (retired, 31st December 1861) ...	Ditto ...	Ditto.
Staff Corps ...	,, C. R. Browne, (retired, 31st December 1861) ...	Ditto ...	Ditto.
Late 3rd E. R.	,, H. M. Nation, (retired, 31st December 1861) ...	Ditto ...	Ditto.
Staff Corps ...	,, W. C. Erskine, C. B., (retired, 25th September 1861) ...	Ditto ...	Ditto.
Late 31st N. I.	,, W. B. Legard, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 60th N. I.	,, J. E. Verner, (retired, 22nd March 1861) ...	Ditto ...	Ditto.
,, 31st N. I.	,, G. Newbolt, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 74th N. I.	,, J. T. Daniell, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 32nd N. I.	,, T. S. Horsbrugh, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 9th N. I.	,, R. Thatcher, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 33rd N. I.	,, A. Martin, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 42nd N. I.	,, A. H. Ross, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 48th N. I.	,, C. Hasell, (deceased, 24th May 1861) ..	Ditto ...	Ditto.
,, 30th N. I.	,, J. Morrieson, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 4th E. L. C.	,, E. Harvey, (retired, 21st September 1861) ...	Ditto ...	Ditto.
,, 48th N. I.	,, H. L. Bird, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 17th N. I.	,, T. G. St. George, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 3rd E. R.	,, J. C. Phillips, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 69th N. I.	,, E. Sissmore, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 13th N. I.	,, W. McCulloch, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 15th N. I.	,, J. W. Carnegie, C. B., (removed from the Army, 5th June 1862)	Ditto ...	Ditto.
,, 25th N. I.	,, C. J. Richards, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 9th N. I.	,, R. H. Sale, (retired, 17th March 1861) ...	Ditto ...	Ditto.
,, 66th N. I.	,, W. S. Sherwill, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 21st N. I.	,, Joseph Chambers (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 70th N. I.	,, G. N. Greene, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 49th N. I.	,, H. J. Piercy, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 25th N. I.	,, H. J. C. Shakespear, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 30th N. I.	,, C. F. Fenwick, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 57th N. I.	,, C. S. Salmon, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 11th N. I.	Captain S. J. Becher, (retired, 31st December 1861) ...	Ditto ...	Ditto.

PROMOTIONS,—*(continued.)*

Corps.	Rank and Names.	To what rank Promoted.	From what Date.
Late 43rd N. I.	Captain R. A. Trotter, (retired, 31st December 1861) ...	Lt. Colonel	18th Feb. 1861
,, 60th N. I.	,, D. Stansbury, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 66th N. I.	Major H. Strachey, (retired, 31st December 1861) ...	Ditto ...	12th June 1861
,, 67th N. I.	,, E. W. Hicks, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 39th N. I.	,, T. Pownall, (retired, 31st December 1861) ...	Ditto ...	13th June 1861
,, 33rd N. I.	,, T. Watson, (retired, 31st December 1861) ...	Ditto ...	12th Dec. 1861
,, 5th E. R.	,, A. B. Fenwick, (deceased, 25th November 1863) ...	Ditto ...	10th Jan. 1863
,, 74th N. I.	,, W F. N. Wallace, (retired, 30th December 1863) ...	Ditto ...	11th Dec. 1863
,, 65th N. I.	Captain T. M. Cameron, (retired, 27th April 1861) ...	Major ...	18th Feb. 1863
,, 66th N. I.	,, H. Strachey. (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 74th N. I.	,, W. F. N. Wallace, (retired, 30th December 1863) ...	Ditto ...	Ditto.
Staff Corps ...	,, W. Wyld, (retired, 31st December 1861) ...	Ditto ...	Ditto.
Late 39th N. I.	,, R. H. D. Tulloh, (retired, 30th September 1861) ...	Ditto ...	Ditto.
,, 67th N. I.	,, E. W. Hicks, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 33rd N. I.	,, T. Watson. (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 72nd N. I.	,, G. E. Ford, (retired, 22nd December 1862) ...	Ditto ...	Ditto.
,, 5th E. R.	,, A. B. Fenwick, (deceased, 25th November 1863) ..	Ditto ...	Ditto.
,, 18th N. I.	,, F. C. Tombs, (retired, 31st December 1861) ...	Ditto ...	Ditto.
,, 33rd N. I.	,, T. Tulloh, retired, 15th August 1861) ...	Ditto ...	Ditto.
Ditto ...	,, T. H. Shum, (retired, 19th February 1861) ...	Ditto ...	Ditto.
,, 32nd N. I.	,, E. Close, (retired, 12th September 1861) ...	Ditto ...	Ditto.
,, 53rd N. I.	,, The Baron F. A Von Meyern, (retired, 10th September 1861	Ditto ...	Ditto.
,, 65th N. I.	,, T. Gordon. (retired, 1st July 1863) ...	Ditto ...	Ditto.
,, 29th N. I	,, L. P. Faddy, (retired, 9th September 1861) ...	Ditto ...	Ditto.
,, 3rd E. R.	,, R. C. Stevenson, (retired, 28th February 1861) ...	Ditto ...	Ditto.
Staff Corps ...	,, B. Henderson, c. B., (deceased, 23rd August 1861) ...	Ditto ...	Ditto.
Late 51st N. I.	,, W. R. Wallace, (retired, 29th February 1864) ...	Ditto ...	Ditto.
,, 67th N. I.	,, W. C. Clifton. (retired, 10th October 1861) ...	Ditto ...	Ditto.
,, 29th N. I.	,, H. M. Davidson, (deceased, 25th September 1863) ...	Ditto ...	Ditto.
,, 22nd N. I.	,, J. W. Smith, (deceased, 19th July 1862) ...	Ditto ...	Ditto.
,, 19th N. I.	,, L. R. Newhouse, (deceased, 13th July 1862) ...	Ditto ...	Ditto.
Ditto ...	,, J. MacDougall. (retired, 1st April 1864) ...	Ditto ...	Ditto.
,, 64th N. I.	,, R. M. Nott. (retired, 14th January 1864) ...	Ditto ...	8th Mar. 1861
,, 35th N. I.	,, E. R. Wiggins. (retired, 27th September 1861) ...	Ditto ...	Ditto.
,, 40th N. I.	,, J. S. D. White, (deceased. 25th September 1861) ...	Ditto ...	11th June 1861
Staff Corps ...	,, M. R. Somerville, (deceased, 3rd September 1862) ...	Ditto ...	12th June 1861
Late 29th N. I.	,, F. G. Thellusson. (resigned, 25th July 1862) ...	Ditto ...	Ditto.
,, 52nd N. I.	,, F. M. Martin, (retired, 10th October 1862) ...	Ditto ...	8th Jan. 1862
,, 20th N. I.	Lieutenant F. R. Thomson, (deceased, 12th August 1862) ...	Ditto ...	11th June 1862
,, 11th N. I.	,, F. A. Sage, (retired, 31st March 1864) ...	Ditto ...	Ditto.

PROMOTIONS,—*(continued.)*

Corps.	Rank and Names.	To what rank Promoted.	From what Date.
Late 35th N. I.	Lieutenant R. Maxwell, (retired, 31st May 1864) ...	Major ...	12th June 1862
,, 73rd N. I.	,, S. Rogers, (deceased, 27th February 1864) ...	Ditto ...	19th ditto.
,, 51st N. I.	Captain E. R. Blavi, (deceased, 9th December 1863) ...	Ditto ...	10th July 1862
,, 42nd N. I.	,, E. V. H. Holt, (retired, 18th November 1862) ...	Ditto ...	25th ditto.
,, 47th N. I.	,, C. P. Lucas, (retired, 23rd March 1863) ...	Ditto ...	10th Dec. 1862
,, 35th N. I.	,, H. T. Pollock, (deceased, 29th April 1863) ...	Ditto ...	28th ditto.
,, 37th N. I.	Lieutenant O. M. Glubb, (deceased, 27th July 1861) ...	Captain ...	18th Feb. 1861
,, 2nd E.B.F.	,, C. R. Blair, (Invalided, 2nd April 1861) ...	Ditto ...	Ditto.
,, 10th N. I.	,, E. L. Clogstoun, (retired, 19th February 1861) ...	Ditto ...	Ditto.
,, 70th N. I.	,, W. M. Grierson, (deceased, 21st April 1861) ...	Ditto ...	Ditto.
,, 2nd E. B.F.	,, The Hon'ble F. B. Best, (retired, 10th August 1863) ...	Ditto ...	Ditto.
,, 69th N. I.	,, C. G. Thorp, (resigned, 15th October 1861) ...	Ditto ...	Ditto.
,, 58th N. I.	,, C. L. Richardson, (deceased, 4th May 1861) ...	Ditto ...	Ditto.
,, 36th N. I.	,, W. W. Clarke, (deceased, 13th October 1863) ...	Ditto ...	Ditto.
,, 68th N. I.	,, H. H. Christian, (retired, 26th May 1862) ...	Ditto ...	27th June 1861
,, 47th N. I.	,, T. W. Evans, (deceased, 25th July 1863) ...	Ditto ...	16th Feb. 1862
,, 24th N. I.	,, G. H. E. Howard, (deceased, 9th March 1863) ...	Ditto ...	10th Dec. 1862

No. 259 *of* 1865.—Subadar Shaik Hussen, "Bahadoor," of the 1st Bombay Regiment Native Infantry (Grenadiers), is promoted from the 2nd to the 1st Class of the "Order of British India," with the title of "Sirdar Bahadoor."

Subadar Major Syed Currim, of the 6th Regiment Bombay Native Infantry, is admitted to the 2nd Class of the "Order of British India," with the title of "Bahadoor."

From the 19th September 1864, in succession to Pensioned Subadar Major Chainsing, "Sirdar Bahadoor," deceased.

Subadar Major Sillimanjee Israel, of the 25th Regiment Bombay Native Light Infantry, is admitted to the 2nd Class "Order of British India," with the title of "Bahadoor."

From the 20th November 1864, in succession to Pensioned Subadar Major Sirdar Sing, "Bahadoor," deceased.

No. 260 *of* 1865.—His Excellency the Governor General in Council has had under his consideration the subject of the formation of an Unattached List for Non-Commissioned Officers and Soldiers of the Native Army, in connection with the Lower Subordinate Establishment of the Department Public Works, similar to that on which the names of European Non-Commissioned Officers and Soldiers of the Upper Subordinate Establishment appear on their permanent appointment to that Department, and His Excellency in Council directs the formation of such a list.

2. Lists of the qualified candidates in each Regiment will be kept in the Office of the Adjutant General, and application for the services of such men as may be desirous of employment in the Public Works Department is to be made by Local Governments or Administrations to the Adjutant General, in order that their transfer to the Unattached List may be effected without delay.

3. His Excellency in Council is satisfied that the Lower Subordinate Establishment of the Department of Public Works may, in very many instances, be recruited from the Native Army (whose promotion would be expedited thereby) by such a transfer of Non-Commissioned Officers and Soldiers, and that a class of men would be obtained superior in many respects, especially in energy and habits of command and obedience, to the classes at present for the most part filling that grade in the Public Works Department. Such men, whilst quite equal to the present nominees in point of intelligence, would, irrespective of being of tried character, even on entering the Public Works Department, have generally served for such periods as would render dismissal in itself a serious punishment, and their good conduct would thus be guaranteed.

4. Want of knowledge of English, and of general qualifications for the Upper Subordinate Establishment, would be the sole obstacles to such men rising to that establishment.

5. The scale of pay for such men will be the same as that for persons not in the Military service of Government, as laid down in para. 3, Section I, Chapter I as modified by paragraph 10,

Chapter II, and in Chapter XV, Section III, paragraphs 3 and 4 of the Public Works Code. The qualifications required will be found detailed in the earlier paragraphs of Chapter II. (See scale of pay and extracts paragraphs 4 to 11 of Chapter II, annexed.) On joining the Public Works Department, the men will receive consolidated pay on the scale above referred to, and be at once transferred to the Unattached List. No further issue of uniform after leaving their Regiments will be made to them, nor will they be required to wear it.

6. The rules regulating remand to Corps, &c., will be the same as those applicable to European Military Subordinates. (See extract from Chapter XVI, Section III, Articles 1, 3, 4, 9, and 11—13, annexed.) When remanded to their Corps, they will be placed at the bottom of the list of their rank in the Regiment as supernumeraries; and, if Non-Commissioned Officers, they are liable to be reduced to the ranks, or to a lower grade, as the Commander-in-Chief may direct.

7. As it is not considered desirable to confer higher Military rank for service in the Department of Public Works on Native Non-Commissioned Officers or Soldiers who may be transferred to it under the provisions of this Order, these classes (who will have no claim to pension under Civil Rules) will be allowed to count their service both in the Army and in the Public Works Department for pensions on the following scale, which has been framed so as to secure to them, as far as possible, the pensions they would probably have been entitled to had they remained in their Regiments:—

To men of 15 and under 20 years' service, as Sepoy	Rs.	4	a month.
To men of 20 and under 30 years' service, as Naick or Havildar	„	7	„
To men of 30 and under 36 years' service, as Jemadar	„	12	„
To men of 36 years' service, as Subadar ..	„	25	„
To men of 40 years' service and upwards with an unblemished character, if specially recommended	„	40	„

No pension can be claimed until the applicant has both served 15 years and been pronounced by an Invaliding Committee unfit for further service; and it will be open to any one when invalided to take the pension of his actual Military rank, should it be higher than that to which he would be entitled by the above scale. After 40 years' service the pension of 25 Rupees a month can be claimed, although the individual may not be unfit for further service.

SCALE OF PAY.

Names of Appointments.	Salaries per Mensem, exclusive of Travelling Allowance.	
	If capable of keeping accounts in the English language.	If not capable of doing so.*
Lower Subordinate Establishment.		
Sub-Overseer and Sub-Surveyor, 1st Class—		
Deserving men above 10 years' departmental service ...	60	55
Ditto ditto 5 ditto ditto ...	50	45
All others	40	35
Sub-Overseer and Sub-Surveyor, 2nd Class—		
Deserving men above 10 years' departmental service ...	35	32
Ditto ditto 5 ditto ditto ...	30	27
All others	25	22
Sub-Overseer, 3rd Class—		
Deserving men above 10 years' departmental service ...	25	23
Ditto ditto 5 ditto ditto ...	20	18
All Others	15	13

* See extracts below, Chap. II, Sec. I, para. 11.

EXTRACTS FROM DEPARTMENT PUBLIC WORKS CODE.

CHAP. XV, SEC. III, PARAS. 3 AND 4.

Travelling Allowance.

Lower Subordinate Establishment.

Para. 3.—Sub-Overseers and Sub-Surveyors are entitled to travelling allowances as follows:—

When on duty at fixed Head Quarters, but with occasion to travel frequently 10 miles or more in one day, or when marching on duty, unprovided with shelter, Rs. 7½ per mensem.

When on Field duties, that is, in the active inspection of a sub-division of roads, canals, or embankments, or when marching on duty, distances not exceeding 20 miles a day, and being unprovided with shelter, Rs. 15 per mensem.

For journeys of upwards of 20 miles a day, performed under sanction of the Executive Engineer or his Assistant, they shall be allowed one anna per mile; except for such portions of those journeys as may be performed by rail, when the allowance will be half an anna per mile.

Expenses which these allowances are to cover.

4. The travelling allowances granted in the last three paragraphs are to cover all expenses of travelling, including the cost of conveying and protecting personal baggage, as well as such public records, stationery,

books, and instruments as an Officer or Subordinate usually carries with him, without requiring any separate means of conveyance, or extra protection. But when any extra conveyance is necessary for public property, the *bonâ fide* expenses may be passed as a contingent charge at the Superintending Engineer's direction.

EXTRACT CHAPTER II, SECTION I.

"Qualifications, Appointments, Promotions."

Sub-Overseers, 3rd Class.

4. *Sub-Overseers of the 3rd Class* must be capable of supervising bricklaying, roofing, flooring, road-making, carpentry, and other work ordinarily done under departmental superintendence.

Appointment of ditto.

5. For the situation of a Head Artificer, or Sub-Overseer, 3rd Class, preference will be given to qualified men educated at a Government Institution, and to men already employed in the Department who may have been brought to the Chief Engineer's notice by Superintending Engineers as deserving of promotion. New appointments are to be considered probationary for one year, and no appointment will be permanently given unless to a fully qualified individual. It will be the duty of Superintending Engineers on their inspections to examine and report upon newly appointed subordinates of these grades.

Sub-Overseers, 2nd Class.

6. *Sub-Overseers of the 2nd Class* must, in addition to the acquirements expected of Sub-Overseers, 3rd Class, be able to lay down and construct an ordinary building from working drawings and specifications, to prepare simple drawings, and to frame corresponding estimates.

Sub-Overseers, 1st Class.

7. *Sub-Overseers of the 1st Class* must, in addition to all the above qualifications, be able to survey with the Chain and Compass, to take levels, and to plot their Surveys and Sections neatly.

Sub-Surveyors.

8. *Sub-Surveyors of the 2nd Class* must be able to survey with the Chain and Compass, to take levels, and to plot their Surveys and Sections neatly. *Sub-Surveyors of the 1st Class* must be able to make simple surveys with the Theodolite in addition to the above.

Examination and appointment of the above.

9. The qualifications of Sub-Overseers of the 1st and 2nd Classes and Sub-Surveyors will generally be ascertained from certificates issued from a Government College of Civil Engineering, but Superintending Engineers are empowered to authorize Executive Engineers to examine and report on candidates in special cases. It is expected that local Governments and Administrations will fill up vacancies occurring in the grades of Sub-Overseers and Sub-Surveyors as far as possible, by appointing qualified students from the Government Civil Engineering Colleges. Vacancies occurring during the year in this grade should therefore remain open until the available supply of qualified candidates has been ascertained by the annual examination at a Government College. Any vacancies which cannot be supplied from that source may then be filled up by appointments made on the recommendation of the Chief Engineer. These men are not required to serve first in the lower classes, and promotions among them will be made by the Local Administration, on the recommendation of the Chief Engineer. But they must enter each class in the lowest grade of that class, and must have served the specified time of five years in such grade before becoming eligible for promotion to a higher one.

Appointments to be on probation for first year.

10. Sub-Overseers and Sub-Surveyors will be on probation for the first year.

Knowledge of English.

11. A knowlege of English, and particularly of English figures and Arithmetic, is to be encouraged in the Lower Subordinates. The Table of Salaries (Chapter I) is framed on the supposition that they are so far proficient in English as to be able to keep accounts in that language. When this is not the case, the salaries will be less than those laid down in the Table by (5) five rupees in the case of each Sub-Overseer or Sub-Surveyor 1st Class, (3) three rupees in the case of each Sub-Overseer or Sub-Surveyor 2nd Class, and (2) two rupees in the case of each Sub-Overseer 3rd Class.

EXTRACT CHAPTER XVI, SECTION III.

Non-Commissioned Officers and Soldiers.

Application of the Articles of War.

Non-Commissioned Officers and Soldiers transferred to the Public Works Department are amenable to the Articles of War, in all matters affecting their character as Soldiers, including respectful bearing towards their Military superiors in the Department * * *

Pay, &c.

3. Non-Commissioned Officers and Soldiers employed in the Public Works Department will be allowed their full pay and batta as Infantry Non-Commissioned Officers (*a*) or Soldiers. * * * * * * *

Records to be brought with Soldiers joining the Department.

4. Non-Commissioned Officers and Soldiers appointed to the Department from Corps or from the Government Colleges should be furnished with Descriptive Rolls, Records of Service, and Last Pay Certificates, which they must deliver to the Executive Engineer of their Division on joining. Duplicates of these documents should be sent by Post to the Executive Engineer, together with an Extract from the Regimental Defaulter's Book for three years. Executive Engineers are required to call for these papers if not received in due time.

Discharges.

9. Any Non-Commissioned Officer or Soldier obtaining his discharge, or otherwise leaving the Military service, will not be allowed, as a matter of course, to remain in the Public Works Department. Permission to continue in the Department after discharge will only be given to men in whose favour positive and unexceptionable testimony to character is given, and their grade in the Department will have to be re-considered.

Remand to Corps.

11. Whenever an Executive Engineer may think that a Non-Commissioned Officer or Soldier should be removed for misconduct or incompetence, he will apply to the Superintending Engineer. The latter, after the fullest investigation in his power, will submit the evidence, his own opinion, and (in cases of alleged misconduct) the defence of the accused, to the Chief Engineer. The latter, if he

(*a*) Bombardiers of Artillery as Corporals of Infantry.

sees cause for proceeding with the case, will take the order of the Local Government, which will, according to its judgment, decide on the documents before it, or cause further investigation by a special agency, or apply to the Military Authorities for a Court Martial on the accused. For the special agency, the Local Government may either appoint a Departmental Court (consisting of three Officers of the Engineer Branch), or associate a Civil Officer with the Superintending Engineer.

Defence required.

12. Every recommendation for the remand of a Non-Commissioned Officer or Soldier to his Corps shall be accompanied by a detailed statement of evidence with the defence of the accused, or of such further investigation as is provided for in the preceding paragraph, including the opinions of the Officers appointed to conduct it.

Papers to be sent to the Corps to which a Soldier is remanded.

13. When a Non-Commissioned Officer or Soldier is remanded to his Corps, copies of the reports and proceedings connected with his removal must be sent to the local Commanding Officer of the Corps by the Executive Engineer; as also documents similar to those which should be received from the Corps with the Soldier—(See paragraph 4).

No. 261 *of* 1865.—Second Class Sub-Assistant Surgeon Nobogopal Ghosal, attached to the Civil Station of Rajmehal, having been pronounced qualified for advancement, is, under the rules passed by Government in the Home Department, dated 6th January 1849, promoted to the 1st Class, with effect from the 7th instant.

No. 262 *of* 1865.—The usual Annual Examination is to be held, as soon as practicable after the receipt of the Order, in each of the Stations of the Bengal Presidency to which Deputy Inspectors General of Hospitals are attached, for the purpose of filling up vacancies in the Military Class of the Medical College. The College Session commences on the 15th June.

2. All candidates will be required to possess a knowledge of the Hindoostanee language, sufficient to enable them to read and write common letters and petitions, and Hospital Registers of Sick, in the Devanagri or Persian character, and to converse with a Sepoy in the Hindoostanee language.

3. Although a knowledge of English will not be insisted on in all cases, a preference in selection is to be given to those candidates who possess a competent knowledge of English, in addition to Hindoostanee.

4. The preference in selection, attainments being equal, will also be given to those who have already been attached to or served in Civil or Regimental Hospitals. Beyond this, preference will not be given to men of any particular class; but respectable young men, especially those educated in the Schools of Behar, the North-Western Provinces, and the Punjab, are encouraged to offer themselves, bringing Certificates of character and acquirements from the Inspectors or Head Masters of the Schools.

5. Those holding such recommendations from the School Authorities, and Certificates of physical fitness from the nearest Medical Officers, will not be required to appear before the Committees. As, however, the number who can be admitted to the College from each Division is very limited, it is necessary that the School Authorities should send the papers of all candidates, as soon as possible after the promulgation of this Order, to the Deputy Inspector General of the Division, who, the recommendations being equal, will select, in preference, those whose nominations are earliest received.

6. The Examination is equally open to the sons of Soldiers and of persons engaged in Civil occupations.

7. The candidates must be between the ages of fifteen and twenty years.

8. No candidate will be allowed to present himself for examination who is physically unfit for the duties of a Soldier, and who cannot produce a written Testimonial of his conduct and character. The strictest care and attention are to be exercised in examining the Credentials of all candidates, who will, in addition, be required to bring regular Descriptive Rolls, in order that they may be identified.

9. The Deputy Inspector General of Hospitals is to prepare a General Roll (in the Form hereafter given) of all candidates, to be laid before the Committee, the Qualification Columns being left blank for the Committee to fill up.

10. Committees for the examination of candidates will be convened by the Officer Commanding the Station, upon the requisition of the Deputy Inspector General of Hospitals, and will consist of two Medical Officers and an Interpreter.

11. These examinations will in future be final as regards the admission of the candidates into the Medical College, no subsequent examination in the College of Fort William being required.

12. Each passed candidate is to be furnished by the Deputy Inspector General of Hospitals with a Descriptive Roll in the subjoined Form, which he is to present to the Principal of the College, and which will be his warrant for admission as a student:—

Descriptive Roll of a Candidate for Examination for a Studentship in the Military Class of the Medical College.

(Here insert Station and Date.)

Name.	Age.	Caste.	Father's Name.	City, Town, or Village.	District or Pergunnah.	Character from Testimonials.	Hindoostanee Qualifications.	English Qualifications.
		Mussulman or Hindoo.	...	...	...	Good.	Persian or Devanagri Superior ... Good ... Fair ... As the case may be.	None. Superior. Good. Fair. As the case may be.

(Signed) A. B., *Surgeon, President.*
„ C. D., *Surgeon, Member.*
„ E. F., *Lieut. and Interpreter.*
„ G. H., *Deputy Inspector General of Hospitals, Division or Circle.*

13. All pupils must, as a condition of their appointment, reside within the College premises at all times, and never be absent from morning and evening muster without special leave.

14. All students of the Military Class, who, on leaving College, after having passed through their studies with credit, shall be certified to possess a competent knowledge of the English language, including Orthography, the meaning of words, writing from Dictation, and Simple Arithmetic as far as the Rule of Three, will be allowed, in addition to his pay, Rs. (5) five per mensem.

15. All students of the Military Class are amenable to the Articles of War, and regularly enlisted as Soldiers.

16. Successful candidates will be provided with a 3rd Class free passage by Rail or by Steamer, as the case may be.

17. Military Class students, while at the College, will receive a stipend or allowance of Rs. (6) six per mensem.

18. No deduction will be made for Uniform.

19. The pay of Military Class Native Doctors, on appointment to the service, is fixed at 20 Rupees a month in Garrison or at a Civil Station, and 25 Rupees a month in the Field, of which sums 5 Rupees are to be considered as Batta, and deducted when on leave of absence from Corps and Civil Stations.

20. Upon their admission they are to enter into an engagement to serve the Government as Native Doctors, as vacancies may occur, for a period of not less than seven years from the time of their leaving the Medical College in that capacity, unless prevented serving that period by physical inability proved before a Medical Committee and certified accordingly. After a service of seven years, they may demand their discharge *in time of peace*.

21. In the event of their continuing to serve, their allowances will, after seven years, and upon undergoing a successful examination, be advanced to Rs. 25 in Garrison or at a Civil Station, and Rs. 30 in the Field.

22. A Native Doctor, who, from wounds or injuries received on service, shall become no longer fit to serve, will be entitled, at any period less than fifteen years, to an Invalid Pension of Rs. 12 per mensem; after fifteen years, to one-half of his Field Pay if in the Military, and of his Garrison Pay if in the Civil, Branch of the Service; after twenty-two years, to the whole of his pay.

23. If invalided under ordinary circumstances of inability to perform his duties, a Native Doctor will be entitled, at the expiration of fifteen years, to a Pension of Rs. 10 per mensem, and after twenty-two years, to one-half of his Field or Garrison Pay, agreeably to the Branch of the Service in which he is employed.

The 15th March 1865.

No. 263 *of* 1865.—With reference to Government General Order No. 165 of the 2nd March 1863, the name of the under-mentioned Officer, who retired from the service under the Annuity Scheme of 1861, is removed from the List of Regimental Lieutenant Colonels of Bengal Cavalry :—

Rank and Name.	Remarks.
Lieutenant Colonel (Major General, Retired List) Robert Augustus Master, C. B.	Deceased.

No. 264 *of* 1865.—The under-mentioned Soldier is admitted to pension as specified opposite to his name :—

Private George DeCruize, of the Lahore Light Horse.	Rs. 14-14-6 per mensem, payable in India.

No. 265 *of* 1865.—Lieutenant Colonel E. J. Simpson, of the Bengal Infantry, Officiating Deputy Commissary General, Central Circle, Lucknow, is allowed leave of absence from the 10th to the 24th April 1865, to visit the Presidency, preparatory to applying for leave of absence on medical certificate to Europe, under the new Regulations.

No. 266 *of* 1865.—The under-mentioned Officers are permitted to proceed to Europe on leave of absence on sick certificate :—

Captain Richard Manuel Sewell, of the Bengal Staff Corps, District Superintendent of Police, Punjab.	For 20 months.
Lieutenant William Henry Collins, of the Royal Engineers, 2nd Assistant in the Great Trigonometrical Survey of India.	For 20 months, under the new Regulations.

No. 267 *of* 1865.—The following Military letter from the Right Hon'ble the Secretary of State for India, No. 368 of the 23rd November 1864, and the Royal Warrant therein referred to, are published for general information, and the Governments of Fort St George and Bombay, and His Excellency the Commander-in-Chief in India, are requested to give effect to the instructions conveyed in the 4th para. of the letter, by forwarding to this Department, for transmission to Her Majesty's Government, Returns of the Veterinary Surgeons who may be desirous of entering Her Majesty's general service on the conditions laid down :—

MILITARY. INDIA OFFICE,
No. 368. *London, 23rd November* 1864.

To His Excellency the Right Hon'ble the Governor General of India in Council.

SIR,—I have been in communication with the Secretary of State for War on the questions raised in the letters of the dates noted in the margin, regarding the position of the Veterinary Surgeons of the Indian Service who may declare for general service in Her Majesty's Army.

15th April 1864, No. 167.
30th August " " 311.
19th Sept. " " 332.
5th May " " 10 } &c.
31st " " 31 }
22nd June " " 45 }

2. I stated that it appeared to me that such of these Veterinary Surgeons as might volunteer for general service would become an integral part of Her Majesty's Army, and hold the same position as the Veterinary Surgeons in that Army; that they would be considered to have terminated all connection with their former service; and that they would be allowed to reckon their past service towards pay, promotion, and half-pay on retirement under the provisions of the Royal Warrant of the 1st July 1859.

3. The Secretary of State for War has expressed his concurrence in these views.

4. This decision should now be communicated for the information of the Veterinary Surgeons of the Local Forces at the three Presidencies, and a return of the Veterinary Surgeons desirous, on such conditions, to enter Her Majesty's general service, should be transmitted to me for communication to the Secretary of State for War.

5. The connection with the respective Military Funds of such of the Veterinary Surgeons of the Local Forces as may volunteer for, and be accepted for, Her Majesty's general service, will depend upon the regulations of the Funds of their respective Presidencies.

I have, &c.,
(Sd.) C. WOOD.

No. 440.

7017
8

VICTORIA R.

Whereas it hath been represented to Us that it is expedient to raise the position and rank of the Veterinary Surgeons of Our Army, and to increase the pay and half-pay of the Officers of that Service; Our will and pleasure is, that from and after the date of this Our Royal Warrant, the following Rules shall be established for the admission, promotion, and retirement, and for the pay, half-pay, relative rank, and allowances of the Veterinary Surgeons of Our Army, and that by these Rules Our Commander-in-Chief shall be governed in recommending Officers for admission, promotion, and retirement.

1. The grades of Veterinary Surgeons in Our Army shall be three in number, viz.:—

1. Staff Veterinary Surgeon.
2. Veterinary Surgeon of the First Class.
3. Veterinary Surgeon.

2. No candidate shall be admitted into the Veterinary Department of the Army until he shall have satisfactorily passed an examination before a Board of Military Veterinary Surgeons.

3. No Veterinary Surgeon shall be eligible for promotion until he shall have passed such examination as Our Principal Secretary of State for War may require, and shall have served on full pay with the Commission of Veterinary Surgeon for five years.

4. A Veterinary Surgeon of the First Class must have served 15 years in the Army with a Commission on full pay before he will be eligible for promotion to the rank of Staff Veterinary Surgeon.

5. In cases, however, of emergency, or when the good of the Service renders such alteration necessary, it shall be competent for Our Secretary of State for War to shorten the several periods of service above-mentioned in such manner as he shall deem fit and expedient.

6. Promotion from one rank to another shall not necessarily be given by seniority, but by selection for professional ability and meritorious conduct; such selection to be made by Our Principal Veterinary Surgeon; and the ground of such selection shall be stated to Us in writing, and recorded in the Office of Our Commander-in-Chief, together with the recommendation of the Principal Veterinary Surgeon.

7. The rates of pay of the Veterinary Officers of Our Army shall be in accordance with the following schedule:—

	Service on Full Pay.					
	After 25 years.	After 20 years.	After 15 years.	After 10 years.	After 5 years.	On appointment.
Staff Veterinary Surgeons	23*s.*	22*s.*	21*s.*	...	...	...
Veterinary Surgeons, 1st Class ...	20*s.*	17*s.*	15*s.* 6*d.*	14*s.* 6*d.*	12*s.* 6*d.*	...
Veterinary Surgeons	14*s.*	14*s.*	14*s.*	13*s.*	11*s.* 6*d.*	10*s.*
Veterinary Surgeons who entered Our service prior to the date of this Warrant...	17*s.* 6*d.*	15*s.*	14*s.*	13*s.*	11*s.* 6*d.*	10*s.*

8. It is to be clearly understood that all increase of pay from length of service is to be granted subject to a Veterinary Surgeon having discharged his duties with zeal and ability.

9. After the date of this Our Warrant, every Veterinary Officer placed on half-pay by reduction of establishment, or on the report of a Medical Board, in consequence of being incapacitated by reason of ill-health, caused by wounds or brought on by the discharge of his duties, shall be allowed the half-pay which his period of full-pay service may entitle him to, according to the following schedule :—

	After 25 years.	After 20 years.	After 15 years.	After 10 years.	After 5 years.	After 3 years.	Under 3 years.
Staff Veterinary Surgeon ...	15*s.*	14*s.*	The half-pay of his former rank.				
Veterinary Surgeon, 1st Class ...	13*s.* 6*d.*	11*s.* 6*d.*	10*s.* 6*d.*	9*s.* 6*d.*	The half pay of his former rank.		
Veterinary Surgeon	...	...	9*s.* 6*d.*	8*s.* 6*d.*	7*s.*	4*s.*	Temporary half-pay at at 4*s.* a day, for a period equal to that for which the officer has served on full pay.
Veterinary Surgeons who entered Our service prior to the date of this Warrant	10*s.*	9*s.* 6*d.*	9*s.* 6*d.*	8*s.* 6*d.*	7*s.*	4*s.*	

10. With a view to maintain the efficiency of the Service, all Officers of the rank of Veterinary Surgeons and Veterinary Surgeons of the First Class shall be placed on the Retired List when they shall have attained the age of 55 years ; and all Staff Veterinary Surgeons when they shall have attained the age of 65 years.

11. Officers thus superannuated shall be entitled to the rate of half-pay, stated in the preceding schedule.

12. Every Veterinary Officer who shall have served upon full pay for 25 years and upwards shall have the right to retire upon half-pay, at the rate of two-thirds of the daily pay he was in receipt of when thus retiring, provided he shall have served three years in the rank from which he retires, or shall have served in any rank for ten years in the Colonies, or five years with an army in the field. But if he shall not have complied with any one of these conditions, he shall be entitled only to half-pay at the rate of two-thirds of the daily pay he was in receipt of before his last promotion.

13. Every Veterinary Officer thus claiming to retire must give six months' notice to the head of his Department of his intention to claim this right, prior to his being allowed to retire ; and no Veterinary Officer shall be entitled to give such notice after he shall be under orders to proceed to any foreign station, until he shall have served at such station for one month.

14. If a Veterinary Officer be placed on half-pay from any other cause than those hereinbefore mentioned, he shall only be allowed a temporary rate of half-pay, not exceeding the rates stated in Clause 9 for such period and at such rate as shall be assigned to him by Our Secretary of State for War, on a consideration of the length and character of the services rendered by such Veterinary Officer.

15. The relative rank of the Veterinary Officers of Our Army shall be as follows :—

Veterinary Surgeon, on appointment, as Subaltern.

Veterinary Surgeon of the First Class, on promotion, as Captain.

Staff Veterinary Surgeon, on promotion, as Major, but junior of that rank.

16. Such relative rank shall carry with it all precedence and advantages attaching to the rank with which it corresponds (except as regards the Presidency of Courts Martial, and of all Military Courts, Committees, and Boards of Inquiry, where Our will and pleasure is, that the senior combatant Officer be always President, and except, further, any military command whatever), and shall regulate the choice of quarters, rates of lodging money, field allowances, forage, servants, fuel, and light, or allowances in their stead, detention and prize money. But when a Veterinary Officer is serving with a regiment, corps, or detachment, the Officer commanding, though he be junior in rank to such Veterinary Officer, shall be entitled to a preference in the choice of quarters.

17. Veterinary Officers shall be entitled to all the allowances granted by Our Warrant of 13th July 1857, on account of wounds and injuries received in action, as combatant Officers holding the same relative ranks.

18. Their families shall, in like manner, be entitled to all the allowances granted by Our Warrant of 15th June 1855, to the families of combatant Officers holding the same relative ranks.

19. Veterinary Officers shall be held entitled to the same honors as other Officers of Our Army, of equal relative rank. This does not, however, extend to the compliments to be paid by garrison or regimental guards, as laid down in the Regulations of our Army.

Given at Our Court of St. James this first day of July 1859, in the twenty-third Year of Our Reign.

By Her Majesty's Command,

SIDNEY HERBERT.

No. 268 *of* 1865.—Colonel Richard Strachey, of the Royal Engineers, Secretary to the Government of India, in the Public Works Department, is permitted to proceed to Europe on furlough under the provisions of para. 39 of G. G. O. No. 332 of 1861.

No. 269 *of* 1865.—His Excellency the Governor General in Council is pleased to publish, for general information, the following Military letter from the Right Hon'ble the Secretary of State for India, No. 31, dated 10th ultimo :—

MILITARY. INDIA OFFICE,

No. 31. *London, 10th February* 1865.

To His Excellency the Right Hon'ble the Governor General of India in Council.

SIR,—Her Majesty has been pleased to approve of the following appointments :—

Lieutenant General Sir William R. Mansfield, K. C. B., Commanding the Troops in the Bombay Presidency, to be Commander-in-Chief of the Forces in the East Indies, with the local rank of General, in succession to General Sir Hugh Rose, G. C. B., whose term of service is about to expire.

Major General Sir Robert Napier, K. C. B., to be placed on the Staff of the Army in the East Indies as a Lieutenant General (with local rank), with a view to his being appointed to the Command of the Troops in the Bombay Presidency, in succession to General Sir William Mansfield.

I have, &c.,

(Sd.) C. WOOD.

No. 270 *of* 1865.—His Excellency the Governor General in Council is pleased to make the following appointment :—

Colonel H. F. Dunsford, C. B., of the Bengal Infantry, Commandant of the 28th (Punjab) Regiment Native Infantry, to the Brigade Staff of the Army temporarily, with the rank of Brigadier General, during the period Brigadier General Tombs may be employed with the Dooar Field Force, or until further orders.

The 16th March 1865.

No. 271 *of* 1865.—With reference to the Notifications issued by the Government of Bengal, dated 4th and 6th instant, the services of the under-mentioned Officers are placed at the disposal of His Excellency the Commander-in-Chief :—

Lieutenant J. Johnstone, of the late 68th Native Infantry, Assistant Superintendent of Police, Durrung, (on leave in Europe).

Assistant Surgeon J. Pitchall, M. D., Officiating Civil Surgeon of Bhaugulpore.

No. 272 *of* 1865.—The under-mentioned Non-Commissioned Officer is admitted to pension as specified opposite to his name :—

Sergeant Benjamin Charlesworth, of the Infantry Company of the European Invalid Battalion.	2*s.* (two shillings) per diem, payable in Europe.

No. 273 *of* 1865.—The under-mentioned Officer is permitted to proceed to Europe on leave of absence on sick certificate :—

Captain the Hon'ble William Murray Fraser, of the Bengal Staff Corps, District Superintendent of Police, N. W. Provinces.	For 20 months.

No. 274 *of* 1865.—The under-mentioned Soldier of Her Majesty's service is permitted to reside and draw his pay in India as an out-Pensioner of Chelsea Hospital, in accordance with the Royal Warrant of the 23rd July 1864, pending a reference to the Home Authorities as to the amount of his pension :—

Sergeant John Fitzgerald, of the Ordnance Department, Supernumerary, A. Battery 22nd Brigade Royal Artillery.

No. 275 *of* 1865.—The under-mentioned Officers are permitted to proceed to Europe on leave of absence on sick certificate :—

Major James Sebastian Rawlins, of the Bengal Staff Corps, 2nd in Command, and Wing Officer 1st Goorkha Regiment.	For 20 months.
Lieutenant Charles Key, of the General List, Infantry	For 20 months, under the new Regulations.

No. 276 *of* 1865.—Subadar Major Shaik Hyder, of the 32nd Regiment Madras Native Infantry, is admitted to the 2nd Class of the "Order of British India," with the title of "Bahadoor."	From the 20th February 1865, in succession to Subadar Major Rungiah "Bahadoor," deceased.

No. 277 *of* 1865.—The under-mentioned Officer is permitted to proceed to Europe on furlough on private affairs :—

Assistant Surgeon Lachlan Hector John Maclean, of the Medical Department.	For 8 years, under the old Regulations.

The 17th March 1865.

No. 278 *of* 1865.—The admission to the Bengal Staff Corps of Ensign G. T. Maitland, of Her Majesty's 42nd Foot, Assistant Engineer, Benares Division, Department of Public Works, announced in Government General Order No. 249 of the 10th March 1865, is to be held to have effect from the 9th April 1864.

No. 279 *of* 1865.—The under-mentioned Officers, admitted to the Bengal Staff Corps by Government General Orders noted in the margin, will rank as Lieutenant in that Corps, under the operation of paragraph 84 of Government General Order No. 332 of the 10th April 1861, with effect from the dates specified opposite

No. 51, dated 12th January 1865.
No. 248, dated 10th March 1865.

to their respective names, subject to Her Majesty's approval :—

Ensign Edward G. Lillingston, of Her Majesty's 71st Foot, Assistant Commissioner of Lohardugga.	17th November 1863.
Ensign George T. Maitland, of Her Majesty's 42nd Foot, Assistant Engineer, Benares Division, Department of Public Works.	9th April 1864.

The admission of Ensign Lillingston to the Staff Corps in Government General Order No. 51 of 12th January 1865 is to be held to have been in the rank of Ensign instead of that of Lieutenant.

No. 280 *of* 1865.—Major J. E. Thomson, of the Bengal Staff Corps, Sub-Assistant Commissary General, is permitted, at his own request, to resign his appointment in the Army Commissariat Department, from the date of his departure on furlough to Europe.

No. 281 *of* 1865.- The under-mentioned Officer is permitted to proceed to Europe on furlough on private affairs :—

Major James Edward Thomson, of the Bengal Staff Corps.	For 2 years.

No. 282 *of* 1865.—Under the authority of the Right Hon'ble the Secretary of State for India, Sub-Conductor B. Robinson, of the Department of Public Works, is admitted to the superior pension of a Sergeant Major, viz., 2*s.* 6*d.* (two shillings and six pence) per diem, instead of that assigned to him in Government General Order No. 243 of the 19th March 1864.

No. 283 of 1865.—Under the authority of the Right Hon'ble the Secretary of State for India, the under-mentioned Soldiers are admitted to pension as a special case, as specified opposite to their respective names :—

Gunner George Burgess, of No. 1 Battery, Bengal Artillery. Gunner Thomas Greene, of No. 1 Battery, Bengal Artillery. Gunner James McGregor, of No. 1 Battery, Bengal Artillery.	1*s.* (one shilling) each per diem, payable in Europe.

No. 284 *of* 1865.—Assistant Surgeon Augustin FitzGerald, of the Medical Department, is permitted to proceed to the Neilgherry Hills on medical certificate, and to be absent from Bengal on that account for eight months, under the new Regulations.

No. 285 *of* 1865.—The under-mentioned Officer is permitted to proceed to Europe on furlough on private affairs.

Lieutenant William Gordon Chalmers, of the Bengal Staff Corps, Wing Officer, 23rd (Punjab) Regiment Native Infantry.	For two years.

No. 286 *of* 1865.—The under-mentioned Officer is permitted to proceed to Europe on leave of absence on sick certificate :—

Ensign James Baxter, (Unattached), Riding Master, Lahore Light Horse.	For 20 months, under the new Regulations.

H. W. NORMAN, *Colonel*,
Secy. to the Govt. of India.

PUBLIC WORKS DEPARTMENT.

ESTABLISHMENT.

No. 87.

Fort William, the 13th March 1865.

NOTIFICATIONS.

Lieutenant C. H. Luard, R. E., Assistant Secretary to the Government of India, in the Public Works Department, is appointed to act as Deputy Consulting Engineer, Railway Department, Bengal, vice Captain R. de Bourbel, R. E., temporarily attached to the Bhootan Field Force.

No. 88.

The 15th March 1865.

Mr. H. Rigg, Assistant Engineer, 2nd Grade, Mysore, has been granted one month's privilege leave from the date on which he might avail himself of it.

No. 89.

Major J. F. Tennant, R. E., Executive Engineer, Arracan Division, British Burmah, was granted one month's privilege leave, with effect from the 27th January 1865.

No. 90.

Lieutenant L. Conway-Gordon, R. E., Assistant Engineer, 2nd Grade, is transferred from the Punjab to the North-Western Provinces, for employment as Assistant Principal in the Thomason College.

No. 91.

The 17th March 1865.

Sergeant J. Keenan, Madras Sappers and Miners, is re-appointed to the Public Works Department as an Overseer of the 2nd Grade and posted to Mysore, with effect from the 14th January 1865.

No. 92.

Mr. F. Martin, C. E., Principal, Civil Engineering College, Calcutta, is appointed to the Public Works Department, Bengal, as an Executive Engineer of the 2nd Grade, with effect from the 25th November 1864. He assumed charge of the Lower Assam Division on the 28th January 1865.

Lieutenant G. S. Hills, R. E., Assistant Principal, Civil Engineering College, Calcutta, is temporarily appointed to the Public Works Department, Bengal, as an Executive Engineer of the 4th Grade, with effect from the 8th November 1864. He assumed charge of the Shillong Division on the 18th December 1864.

No. 93.

Mr. W. W. Culcheth, Assistant Engineer, 1st Grade, and Mr. J. Sheldon, Assistant Engineer, 2nd Grade, North-Western Provinces, passed the examination in Hindoostanee on the 26th January 1865.

No. 94.

Lieutenant Colonel W. Maxwell, R. A., assumed charge of the office of Chief Engineer and Secretary to the Chief Commissioner, Central Provinces, Public Works Department, on the forenoon of the 6th March 1865.

No. 59.

Mr. R. C. McKennie, Assistant Engineer, 2nd Grade, is transferred from the Bangalore to the Nuggur Division of Public Works, and Mr. H. Rigg, Assistant Engineer, 2nd Grade, from the latter to the former Division.

E. C. S. WILLIAMS, *Captain*, R. E.
Under Secy. to the Govt. of India.

ADVERTISEMENTS.

NOTICE.

The undersigned having arranged with his creditors, has, with the permission of the Court, withdrawn his petition of Insolvency.

WM. C. STEWART.

CALCUTTA,
14th March 1865.

NOTICE.

Mr. W. C. Stewart having obtained an order of the Court for the withdrawal of his petition of Insolvency, I have no further claim against his Estate.

JOHN COCHRANE,
Official Assignee.

CALCUTTA,
The 11th March 1865.

LOST OR STOLEN.

Lost or stolen at Lucknow during the mutiny,

A Government Paper No. 164 of the 3½ per cent. loan of 1853-54, for Rupees 600, the property of the undersigned, which has been stopped at the Calcutta Treasury.

Notice is hereby given that the undersigned has not endorsed or transferred it.

LUCKNOW,
1st March 1865. SOLEMAN MIRZAH, *alias* SAIFOOD DOWLAH.

Government Promissory Note No. 333 of 23889 of 1859-60, for Rupees 1,000, at 5½ per cent., belonging to me, has been destroyed by acid.

RAMCOOMAR CHATTERJEE,
Head Asst., Barrackpore Exc. Commt. Office.

BARRACKPORE,
The 6th March 1865.

COMMISSARIAT NOTIFICATION.

I. Under instructions from Government, the Tannery at Hoonsoor, near Mysore, with all fixtures, is to be disposed of, and notice is hereby given that tenders for the same will be received by the Deputy Commissary General at his Office at Madras, up to 12 o'clock noon of Tuesday, the 21st March 1865.

II. The Tannery stands in an enclosed yard about 626 feet long by 473 feet broad, and is situated on the "Lutchmeu Treert" River, has an ample supply of water, and comprises—

"Bark and Raw Hide store-rooms,
"Lime and Bark Pits,
"Upper-storied Currier's shop,
"Buff Mill,
"Work shop,
"Store Godowns for finished goods,"

with all the other requisite buildings for a business capable of turning out 2,000 Hides a month in the best style.

III. The Tannery will be made over to the successful competitor on the 1st of July 1865, on his complying with conditions hereinafter mentioned.

IV. There is a large quantity of stock raw, and in process of tanning, on hand, which the successful competitor for the Tannery will have the option of taking at a valuation, composed of Australian, Cape, and Country Bullock, Buffaloe, Sheep, and Goat Hides.

V. One-third of the price to be paid down in cash on the acceptance of the successful tenders being declared, and the balance on or before the 1st July 1865.

VI. Should the successful competitor for the Tannery take the stock at a valuation, transfer of the whole property can be made at once on payment of balance of price.

VII. Failing the due fulfilment of this engagement, the purchaser will forfeit the aforesaid third of the purchase money.

VIII. Any further information required can be obtained on application at the Commissary General's Office, or to the Deputy Assistant Commissary General at Hoonsoor, who will show the Tannery.

IX. Intending purchasers must satisfy themselves of the nature and description of the Buildings and Articles. This Department will not be answerable for any errors of description.

By order,

E. E. MILLER, *Lieut. Colonel,*
Deputy Commissary General.

COMMY. GENERAL'S OFFICE,
Madras, 21st January 1865.

BENGAL OFFICIAL ARMY LIST.

The *Bengal Official Quarterly Army List*, No. XI, corrected in the office of the Adjutant General up to the 1st of January 1865, is now ready. Price five Rupees *in advance*, and eight annas extra if sent by post. Apply to

CALCUTTA,
6, *Bankshall Street.* O. T. CUTTER, *Publisher.*

FOR SALE,

A COLLECTION of TREATIES, ENGAGEMENTS, and SUNNUDS, relating to India and neighbouring countries, compiled by C. U. Aitchison, B. C. S., Under Secretary to the Government of India in the Foreign Department. Price, Five Rupees per volume.

VOLUME I.—Containing the Treaties, &c., relating to Bengal, Burmah, and the Eastern Archipelago. Super royal, 8vo. pp. 872, with three Maps.

VOLUME II.—Containing the Treaties, &c., relating to the North-Western Provinces, Oudh, Nepal, the Punjab, and the States on the Punjab Frontier. Super royal, 8vo. pp. 456, with two Maps.

VOLUME III.—Containing the Treaties, &c., relating to the Peishwa, Nagpoor, and Bundlecund. Super royal, 8vo. pp. 588.

VOLUME IV.—Containing Treaties, &c., relating to the States in Rajpootana, Central India, and Malwa.

VOLUME V.—Containing Treaties, &c., relating to Hyderabad, Mysore, and Coorg, the Madras Presidency, and Ceylon.

VOLUME VI.—Containing Treaties, &c., relating to the States within the Bombay Presidency.

NOTICE.

The attention of all Treasury Officers drawing Bills on the General Treasury, Bank of Bengal, is hereby called to the necessity of despatching the advices of Bills drawn by them on the day of issue. Much inconvenience is frequently experienced owing to delay on the part of Officers in charge of Treasuries in forwarding these Letters of Advices.

R. P. HARRISON,
Acctt. Genl. to the Govt. of India.

FORT WILLIAM,
The 24th February 1865.

PRELIMINARY ANNOUNCEMENT.

IMPORTANT INDIGO FACTORIES FOR SALE.

To be sold by Public Auction on or about the 20th instant (unless previously disposed of by private contract)—

By order of the Mortgagees,

The well-known Indigo Factories called the Allumchund Concern, at Allahabad, with valuable Talook property attached thereto and Koontee crop now in the ground;

also

The Koorsun Factory, Allahabad, with Koontee crop, both lately the property of N. Flouest, Esq., deceased. Further particulars and conditions of sale will be published, and in the mean while applications to be made to Messrs. W. Moran and Co., Old Mint Mart, Calcutta, and Messrs. Barrow, Sen, and Watson, Old Post Office Street, Calcutta.

Just Published

VOLUME II

OF

SELECTIONS FROM CALCUTTA GAZETTES

OF THE YEARS

1789, 90, 91, 92, 93, 94, 95, 96, and 97.

SHOWING THE POLITICAL AND SOCIAL CONDITION OF THE ENGLISH IN INDIA

SEVENTY YEARS AGO.

By W. S. SETON-KARR, C. S.,

JUDGE OF THE HIGH COURT OF JUDICATURE, CALCUTTA,

AND

PRESIDENT OF THE RECORD COMMISSION.

Price, Five Rs. per copy.

A few copies of Vol. I are still available, price Rs. 3.

Apply to O. T. CUTTER,
Military Orphan Press.

Printed and Published for the Government of India, by O. T. CUTTER, *at the Military Orphan Press.*

No. 10.

SUPPLEMENT TO

The Gazette of India.

CALCUTTA, SATURDAY, MARCH 18, 1865.

OFFICIAL PAPERS.

A SUPPLEMENT *to the* GAZETTE OF INDIA *will be published from time to time, containing such Official Papers and information as the Government of India may deem to be of interest to the Public, and such as may usefully be made known.*

Non-Subscribers to the GAZETTE *may receive the* SUPPLEMENT *separately on a payment of six Rupees per annum if delivered in Calcutta, or nine Rupees four annas if sent by Post.*

No Official Orders or Notifications the publication of which in the GAZETTE OF INDIA *is required by Law, or which it has been customary to publish in the* CALCUTTA GAZETTE, *will be included in the* SUPPLEMENT. *For such Orders and Notifications the body of the* GAZETTE *must be looked to.*

Government of India.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 10th March 1865.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honour the Lieutenant Governor of Bengal.

The Hon'ble H. B. Harington.

The Hon'ble H. Sumner Maine.

The Hon'ble W. Grey.

The Hon'ble H. L. Anderson.

The Hon'ble Mahárájá Vijayaráma Gajapati, Ráj Bahádur of Vizianagram.

The Hon'ble Rájá Sáhib Dyál Bahádur.

The Hon'ble G. Noble Taylor.

The Hon'ble W. Muir.

The Hon'ble R. N. Cust.

The Hon'ble D. Cowie.

CALCUTTA GREAT JAIL BILL.

His Honour the Lieutenant Governor of Bengal moved that the Report of the Select Committee on the Bill to remove the Great Jail of Calcutta from the control of the Sheriff and transfer it to that of the Government of Bengal, be taken into consideration. He said that the amendments made by the Select Committee being almost entirely verbal and of no material consequence, did not call for any observation.

The Motion was put and agreed to.

His Honour then said that there was one amendment which he had to propose in the Bill, and that was the substitution of the word "April" for the word "May" in the 15th Section. There was no reason why the Act should not come into force at once, and there was a Bill now before the Bengal Council which depended on the passing of this Act. It was therefore desirable that the Act should come into force as soon as possible.

The Motion was put and agreed to.

His Honour the Lieutenant Governor of Bengal also moved that the Bill as amended be passed.

The Motion was put and agreed to.

STAMP ACT AMENDMENT BILL.

The Hon'ble MR. HARINGTON introduced the Bill to amend Act X of 1862 (to consolidate and amend the law relating to Stamp Duties) and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that, upon asking for leave to introduce this Bill, he had explained briefly the object and reasons of the Bill. He had since received a suggestion from his Hon'ble Colleague Mr. Grey, which he regarded as a very useful one. Mr. Grey suggested that the Government of India should have power, not only to reduce the rate of Stamp Duty on particular classes of deeds and particular deeds, which was what the Bill proposed, but also to exempt certain classes of persons from the operation of any particular part of the Act of 1862, such, for instance, as soldiers in respect of marriage and baptismal certificates. He should have much pleasure in proposing in Committee the introduction of a Section into the Bill to give effect to his Hon'ble Colleague's suggestion.

The Motion was put and agreed to.

CIVIL JUSTICE BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill for the im-

provement of the Administration of Civil Justice in respect of Suits of small value be taken into consideration. He said that, in introducing this Bill to the Council, he had remarked that, since the Sections relating to the specific performance of contracts had been removed to the Civil Procedure Code of his Hon'ble friend Mr. Harington, no controverted part of the measure would remain. The Bill after deducting those Sections, added only two new features to the Small Cause Court system as it existed. The first was the creation of the Office of Registrar. The Registrar was the Officer intended to take upon himself the routine business, and thus it was hoped the grouping of inferior Courts might be facilitated with a view to their supervision by a Judge of the first class going circuit among them. The other addition to the system was the creation of the office of what he would call—though the phrase was not in the Bill—Judges Extraordinary. He was himself of opinion that it was impossible to introduce an appeal into the Small Cause system without revolutionizing that system altogether. He thought that the Small Cause Judges and their decisions required inspection and revision, and that this inspection and revision would be most wholesomely effected by the introduction of these Judges Extraordinary—persons invested with the powers of Small Cause Judges for the time. In that form the Bill went before the Committee, and the Committee had made a change, which, he thought, would commend itself to the approval of the Council. The law relating to Small Cause Courts in the Mofussil would, if the Bill had passed in its original shape, have been comprised in three Acts, first, Act XLII of 1860, next, the amending Act XII of 1861, and lastly, his original measure. The Committee had thought fit to consolidate these three Acts, and if the Council would pass the Bill in its present form, the whole of the Small Cause system would be contained within the four corners of a single enactment.

There was no other part of the Bill on which it was necessary for him to make any observations, except that the establishment of Courts of Small Causes in Military Cantonments, (which were substituted, as the Council would remember, for the Courts of Requests) had given rise to some doubts as to whether the jurisdiction of the Military Courts mentioned in Act XI of 1841, had not, by implication, been taken away. It was never proposed that their jurisdiction should be taken away, and therefore this Bill provided that nothing contained in Act III of 1859, Section 2, or Act XXII of 1864, Sections 6—8, should be understood, to affect the jurisdiction of those Courts. In like manner this Act would save the jurisdiction of Courts of Requests convened in India under the English Mutiny Act. This provision was not absolutely required, but for the sake of clearness, it was better that it should be inserted.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ADVOCATES' AND ATTORNEYS' (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to regulate the admission, removal, and remuneration of Advocates and Attorneys in the Civil and Criminal Courts and Revenue Offices of the North-Western Provinces of the Presidency of Bengal, and moved that the Report and the Bill as amended in Committee be published for three weeks in the *Gazette of India*. He said that the changes which the Select Committee had proposed were so numerous and so important, that if they were adopted by the Council, as he hoped they would, the Bill as passed into law would bear little, if any, resemblance to the Bill as introduced. He believed that every one of the changes suggested by the Select Committee would be found an improvement on the Bill as introduced. Looking to the extent and character of the proposed amendments, the Select Committee had thought it right to recommend that, before the Council was called upon to consider them, the Bill should be published in the *Gazette of India* for three weeks, the object, of course, being to give the public an opportunity of knowing what was intended and of offering any remarks upon the Bill as proposed to be altered by the Select Committee. He wished that he could have mentioned a longer period for the publication of the Bill, but the time for which the Council would probably continue to sit would not admit of this. The only change proposed by the Select Committee which he considered it necessary specially to notice at this time, was the extension of the provisions of the Bill to the Territories under the Government of the Lieutenant-Governor of Bengal, instead of its application being confined, as was originally intended, to the territories under the Government of the Lieutenant-Governor of the North-Western Provinces. This change had been made on the recommendation of His Honour the Lieutenant-Governor of Bengal, and was of itself a sufficient reason for the publication of the Bill in its amended form.

The Motion was put and agreed to.

CHIEF COURT (PUNJAB) BILL.

The Hon'ble MR. CUST presented the Report of the Select Committee on the Bill to amend the constitution of the Chief Court of Judicature in the Punjab and its Dependencies.

FINANCIAL COMMISSIONER (OUDH) JURISDICTION BILL.

The Hon'ble MR. CUST also presented the Report of the Select Committee on the Bill to remove doubts with regard to the jurisdiction of the Financial Commissioner of Oudh.

The following Select Committee was named:—

On the Bill to amend Act X of 1862 (to consolidate and amend the law relating to Stamp Duties)—The Hon'ble Messrs. Harington, Maine, Grey, Bullen, and Cowie.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 10th March 1865.

Printed and Published for the Government of India, by O. T. CUTTER, *at the Military Orphan Press.*

No. 11.

SUPPLEMENT TO

The Gazette of India.

CALCUTTA, SATURDAY, MARCH 25, 1865.

OFFICIAL PAPERS.

A Supplement *to the* Gazette of India *will be published from time to time, containing such Official Papers and information as the Government of India may deem to be of interest to the Public, and such as may usefully be made known.*

Non-Subscribers to the Gazette *may receive the* Supplement *separately on a payment of six Rupees per annum if delivered in Calcutta, or nine Rupees four annas if sent by Post.*

No Official Orders or Notifications the publication of which in the Gazette of India *is required by Law, or which it has been customary to publish in the* Calcutta Gazette, *will be included in the* Supplement. *For such Orders and Notifications the body of the* Gazette *must be looked to.*

Government of India.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., cap. 67.

The Council met at Government House on Monday, the 20th March 1865.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honour the Lieutenant Governor of Bengal.

The Hon'ble H. B. Harington.

The Hon'ble H. Sumner Maine.

The Hon'ble Sir C. E. Trevelyan, K. C. B.

The Hon'ble W. Grey.

The Hon'ble G. Noble Taylor.

The Hon'ble H. L. Anderson.

The Hon'ble J. N. Bullen.

The Hon'ble Mahárájá Vijayaráma Gajapati, Ráj Bahádur of Vizianagram.

The Hon'ble Rájá Sáhib Dyál Bahádur.

The Hon'ble R. N. Cust.

The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.

The Hon'ble D. Cowie.

CIVIL COURTS' (CENTRAL PROVINCES) BILL.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Civil Judicature in the Central Provinces.

PARSEES' MARRIAGE AND DIVORCE BILL.

The Hon'ble MR ANDERSON presented the Report of the Select Committee on the Bill to define and amend the law relating to Marriage and Divorce among the Parsees.

HIGH COURTS' CRIMINAL JURISDICTION BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to amend the Procedure of the High Courts of Judicature in the exercise of their original Criminal jurisdiction and to provide for the exercise of such jurisdiction at places other than their usual place of sitting, be taken into consideration. He said—"Sir, the Select Committee, in reporting on this Bill, accompanied its report with a very full explanation of the amendments which it proposed to introduce; and the Bill has now been before the public for rather more than a month. During that period almost no criticisms on it have been received, and apart from the point on which public attention has chiefly fastened—the abolition of the Grand Jury—I am inclined to say that the measure has been received with favour. The few remarks which I intend to make in placing my motion before the Council will be addressed to observations—for I can hardly call them objections—in the frequent conversations which I have naturally had on the subject of the Bill. The first relates to the institution of Special Juries in criminal cases. This improvement has long been called for by the best English Jurists, but it is scarcely an innovation. For Special Juries have always been allowed in the trials of misdemeanors. Why they are denied in charges of felony, I never could understand, and probably the reasons are entirely historical. But the existing system does not work well even in England, for I am informed that in very difficult cases, when the attention of the Jury has to be fixed upon a long and intricate issue of evidence, a process has to be resorted to which may be called,

provement of the Administration of Civil Justice in respect of Suits of small value be taken into consideration. He said that, in introducing this Bill to the Council, he had remarked that, since the Sections relating to the specific performance of contracts had been removed to the Civil Procedure Code of his Hon'ble friend Mr. Harington, no controverted part of the measure would remain. The Bill after deducting those Sections, added only two new features to the Small Cause Court system as it existed. The first was the creation of the Office of Registrar. The Registrar was the Officer intended to take upon himself the routine business, and thus it was hoped the grouping of inferior Courts might be facilitated with a view to their supervision by a Judge of the first class going circuit among them. The other addition to the system was the creation of the office of what he would call—though the phrase was not in the Bill—Judges Extraordinary. He was himself of opinion that it was impossible to introduce an appeal into the Small Cause system without revolutionizing that system altogether. He thought that the Small Cause Judges and their decisions required inspection and revision, and that this inspection and revision would be most wholesomely effected by the introduction of these Judges Extraordinary—persons invested with the powers of Small Cause Judges for the time. In that form the Bill went before the Committee, and the Committee had made a change, which, he thought, would commend itself to the approval of the Council. The law relating to Small Cause Courts in the Mofussil would, if the Bill had passed in its original shape, have been comprised in three Acts, first, Act XLII of 1860, next, the amending Act XII of 1861, and lastly, his original measure. The Committee had thought fit to consolidate these three Acts, and if the Council would pass the Bill in its present form, the whole of the Small Cause system would be contained within the four corners of a single enactment.

There was no other part of the Bill on which it was necessary for him to make any observations, except that the establishment of Courts of Small Causes in Military Cantonments, (which were substituted, as the Council would remember, for the Courts of Requests) had given rise to some doubts as to whether the jurisdiction of the Military Courts mentioned in Act XI of 1841, had not, by implication, been taken away. It was never proposed that their jurisdiction should be taken away, and therefore this Bill provided that nothing contained in Act III of 1859, Section 2, or Act XXII of 1864, Sections 6—8, should be understood, to affect the jurisdiction of those Courts. In like manner this Act would save the jurisdiction of Courts of Requests convened in India under the English Mutiny Act. This provision was not absolutely required, but for the sake of clearness, it was better that it should be inserted.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ADVOCATES' AND ATTORNEYS' (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to regulate the admission, removal, and remuneration of Advocates and Attorneys in the Civil and Criminal Courts and Revenue Offices of the North-Western Provinces of the Presidency of Bengal, and moved that the Report and the Bill as amended in Committee be published for three weeks in the *Gazette of India*. He said that the changes which the Select Committee had proposed were so numerous and so important, that if they were adopted by the Council, as he hoped they would, the Bill as passed into law would bear little, if any, resemblance to the Bill as introduced. He believed that every one of the changes suggested by the Select Committee would be found an improvement on the Bill as introduced. Looking to the extent and character of the proposed amendments, the Select Committee had thought it right to recommend that, before the Council was called upon to consider them, the Bill should be published in the *Gazette of India* for three weeks, the object, of course, being to give the public an opportunity of knowing what was intended and of offering any remarks upon the Bill as proposed to be altered by the Select Committee. He wished that he could have mentioned a longer period for the publication of the Bill, but the time for which the Council would probably continue to sit would not admit of this. The only change proposed by the Select Committee which he considered it necessary specially to notice at this time, was the extension of the provisions of the Bill to the Territories under the Government of the Lieutenant-Governor of Bengal, instead of its application being confined, as was originally intended, to the territories under the Government of the Lieutenant-Governor of the North-Western Provinces. This change had been made on the recommendation of His Honour the Lieutenant-Governor of Bengal, and was of itself a sufficient reason for the publication of the Bill in its amended form.

The Motion was put and agreed to.

CHIEF COURT (PUNJAB) BILL.

The Hon'ble MR. CUST presented the Report of the Select Committee on the Bill to amend the constitution of the Chief Court of Judicature in the Punjab and its Dependencies.

FINANCIAL COMMISSIONER (OUDH) JURISDICTION BILL.

The Hon'ble MR. CUST also presented the Report of the Select Committee on the Bill to remove doubts with regard to the jurisdiction of the Financial Commissioner of Oudh.

The following Select Committee was named:—

On the Bill to amend Act X of 1862 (to consolidate and amend the law relating to Stamp Duties)—The Hon'ble Messrs. Harington, Maine, Grey, Bullen, and Cowie.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 10th March 1865.

Printed and Published for the Government of India, by O. T. CUTTER, *at the Military Orphan Press.*

No. 11.

SUPPLEMENT TO

The Gazette of India.

CALCUTTA, SATURDAY, MARCH 25, 1865.

OFFICIAL PAPERS.

A SUPPLEMENT *to the* GAZETTE OF INDIA *will be published from time to time, containing such Official Papers and information as the Government of India may deem to be of interest to the Public, and such as may usefully be made known.*

Non-Subscribers to the GAZETTE *may receive the* SUPPLEMENT *separately on a payment of six Rupees per annum if delivered in Calcutta, or nine Rupees four annas if sent by Post.*

No Official Orders or Notifications the publication of which in the GAZETTE OF INDIA *is required by Law, or which it has been customary to publish in the* CALCUTTA GAZETTE, *will be included in the* SUPPLEMENT. *For such Orders and Notifications the body of the* GAZETTE *must be looked to.*

Government of India.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., cap. 67.

The Council met at Government House on Monday, the 20th March 1865.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honour the Lieutenant Governor of Bengal.

The Hon'ble H. B. Harington.

The Hon'ble H. Sumner Maine.

The Hon'ble Sir C. E. Trevelyan, K. C. B.

The Hon'ble W. Grey.

The Hon'ble G. Noble Taylor.

The Hon'ble H. L. Anderson.

The Hon'ble J. N. Bullen.

The Hon'ble Mahárájá Vijayaráma Gajapati, Ráj Bahádur of Vizianagram.

The Hon'ble Rájá Sáhib Dyál Bahádur.

The Hon'ble R. N. Cust.

The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.

The Hon'ble D. Cowie.

CIVIL COURTS' (CENTRAL PROVINCES) BILL.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Civil Judicature in the Central Provinces.

PARSEES' MARRIAGE AND DIVORCE BILL.

The Hon'ble MR ANDERSON presented the Report of the Select Committee on the Bill to define and amend the law relating to Marriage and Divorce among the Parsees.

HIGH COURTS' CRIMINAL JURISDICTION BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to amend the Procedure of the High Courts of Judicature in the exercise of their original Criminal jurisdiction and to provide for the exercise of such jurisdiction at places other than their usual place of sitting, be taken into consideration. He said—"Sir, the Select Committee, in reporting on this Bill, accompanied its report with a very full explanation of the amendments which it proposed to introduce; and the Bill has now been before the public for rather more than a month. During that period almost no criticisms on it have been received, and apart from the point on which public attention has chiefly fastened—the abolition of the Grand Jury—I am inclined to say that the measure has been received with favour. The few remarks which I intend to make in placing my motion before the Council will be addressed to observations—for I can hardly call them objections—in the frequent conversations which I have naturally had on the subject of the Bill. The first relates to the institution of Special Juries in criminal cases. This improvement has long been called for by the best English Jurists, but it is scarcely an innovation. For Special Juries have always been allowed in the trials of misdemeanors. Why they are denied in charges of felony, I never could understand, and probably the reasons are entirely historical. But the existing system does not work well even in England, for I am informed that in very difficult cases, when the attention of the Jury has to be fixed upon a long and intricate issue of evidence, a process has to be resorted to which may be called,

though in a very innocent sense, packing the Jury, that is to say, packing it for the purpose of obtaining Jurors adequate to the enquiry. A notable example of that occurred, I am told, in a great English *cause celèbre*, the trial of William Palmer, of Rugeley, for murder by poisoning. The particular point to which I wish to direct the Council's attention is an incident of the substitution of one system for another. We place all present Grand Jurors on the Special Jury list, but we provide that no addition shall be made to the list until by death or loss of qualification the number of Special Jurors has diminished to 200. This maximum we prescribe in order that the Special Jury list may not produce the pernicious effects attributed, I believe with justice, to the Grand Jury list in Calcutta, and certainly complained of bitterly by the communities of the two other Presidency Towns —the undue exhaustion of the lower list by the higher. Now there are certain gentlemen at present in Calcutta who, by the acquisition of qualification, would probably be able to get very soon on the Grand Jury list, and there are others who, arriving in India before the Special Jury list has diminished to 200, and possessing the qualification of education and property, may, nevertheless, be unable for a time to get their names enrolled on it. Well, Sir, it might be enough to say that some inconveniences must attend every transition from one system to another, and that this is one of those inconveniences. But I will go on to express my fervent hope that when this measure comes into full operation, we shall not find people thinking themselves degraded, as I fear they do at present, by serving on Common Juries. I trust that when any gentleman of education and property happens to be excluded from the Special Jury list, he will not say, as at present, that he suffers degradation and humiliation, but only that there are others in Calcutta as educated and opulent as he is, and that there is not room for all on the Special Jury list.

Sir, it may be perhaps asked,—I don't mean that the objection has actually been made—why, if you think so highly of Special Juries in the Presidency Towns, do you not extend them to the Mofussil? The answer might be, that we make the best use we can of the material in the Mofussil. But a still more satisfactory reply is possible, namely, that our Juries in the Mofussil will be more nearly akin to Special than to Common Juries. Our Jury material in the Mofussil is scanty, but it is exceedingly good. The non-official class there corresponds, I am told, more nearly with the class from which Grand Juries in the Presidency Towns are taken, and the remainder of the European element of the Juries will consist of those military men whose exemption from service is partially repealed by this Bill. Sir, I think that military men will make excellent Jurors, and I consider that the public gratitude is due to His Excellency the Commander-in-Chief for the liberality with which he has opposed himself to many natural military prepossessions, and has declared himself in favour of this part of the measure. Military men cannot be charged with interested deference to the Civil Government, but they can never be without sympathy for justice and order. These are the exact qualifications one would wish for in a juror, and I do not think that these new duties will be felt by Officers a distasteful burthen on them. I should imagine that there are many hours in the day which hang heavily on the hands of an active-minded Officer in an Indian cantonment, and I should imagine it far from disagreeable to him to give up a portion of his time to one of the most impressive, most elevating, and most instructive of employments—participation in a criminal trial conducted by a trained Judge, aided by skilful Counsel, under the rules of evidence. The experience thus gained would not, I should suppose, be wholly without use to military men in those strictly judicial functions which sometimes devolve upon them.

The next point, Sir, which requires notice may have escaped attention from its being enveloped in technical phraseology. We continue the right of peremptory challenge in the Presidency Towns, but it is not given in the Mofussil by the Code of Criminal Procedure, nor by this Bill. The reason is, that, though we do not give the right, we give the result of exercising the right. For the Bill declares that the majority of a Jury which is to try European British subjects shall consist of Europeans or Americans only. Now this privilege of peremptory challenge, which is a very questionable one, is, I think, only justifiably used in the Presidency Towns when it is employed to eliminate from the Jury persons who may be supposed to have a vague and undefined dislike to the prisoner; and I think it is carried to the furthest allowable point when it secures for the prisoner a majority of persons of the same race with himself. In fact, the old English writers on law, who do not often offer a justification for the doctrines they lay down, justify the right of peremptory challenge, on the plea that if it did not exist, certain privileges which particular persons are entitled to by general understanding would be attainable with difficulty, as, for example, the privilege of a foreigner to be tried by a Jury *de medietate linguæ*.

Next, Sir, as to the composition of the Jury. My Hon'ble friend Mr. Bullen has not embodied in an amendment the objection which he felt to the proposal of the Select Committee, or else I should have deferred what I have to say on the subject. I am now bound to state that, if the issue had simply been between a Jury deciding by unanimity and a Jury deciding by majority, I must have voted for an unanimous Jury. I hold strongly with the author of the most philosophical of the recent treatises on English Criminal Law—Mr. Fitzjames Stephen—that, rather than create a Jury deciding by majority, it is always better to strike off the minority altogether. The gist of the institution is the concurrence of the Jurors. All systems of jurisprudence require some conditions to be satisfied before justice is done on the accused. Some will be satisfied with nothing less than a confession of guilt—a confession often extorted by what is little less than moral torture. Others demand that certain irresistible presumptions shall arise upon the evidence. Others again require that unity of proof shall be made up out of what are called fractional proofs. But the English law differs from the rest in laying down simply that, when a certain number of men of average intelligence are so convinced by the evidence as to be of one mind upon the prisoner's guilt, the arm of the law shall move. Everything, therefore, turns upon concurrence; and if by requiring only a majority, you dispense with the concurrence of the minority, you may just as well dispense with the minority itself. But the Jury recommended by the Select Committee is not open to the reproach

of violating this principle. It is a Jury deciding by nine against three, but there is an alternative concurrence required instead of the concurrence of the three, namely, the concurrence of the Judge. The concurrence of the Judge counts as equal to the concurrence of the three last Jurors. Our Jury is therefore in harmony with Mr. Stephen's canon, and I think we gain a great advantage in retaining the almost consecrated number of twelve.

Next, Sir, as to the expedient by which we propose to replace the functions of the Grand Jury, all I claim for it is that it is the best of the substitute which can be found. I am not going to attack the Grand Jury to-day. I have little to add to, and nothing to retract from, the arguments which I used against it on a former occasion; and I propose this morning to leave the discussion of its character to others. But I freely admit that, though I do not think the Grand Jury a good institution anywhere, and should be disposed to use even stronger language on it in India, it is an institution for which it is very difficult to find a substitute. That proposed by the Select Committee has, at all events, the advantage of expressing and corresponding to the actual operation of the Grand Jury system in England. I really believe that, taking England and Ireland as a whole, the cases in which during one single year Grand Juries ignore bills otherwise than under the direction of the Judge may be counted upon the fingers. So then, Sir, if the Bill becomes law, before a European British subject is placed at the bar, the Magistrate acting under the increased responsibility which this measure will create (for his miscarriages will no longer be shielded by the secret inquiry before the Grand Jury) must first make up his mind that there is evidence for a committal. Next, the papers will go to the Advocate General (for that I am told is the practice, though not the express law), who will say whether he agrees with the Magistrate. Lastly, the Judge, before the trial, will declare the charge upon the depositions to be sustainable. I end, therefore, by affirming that, if even an innocent man be unfortunate enough to have such a load of suspicion attached to him that it breaks through all this protective machinery, on every principle of justice he ought to be openly tried, and trust for the vindication of his innocence to the enquiry before the Common Jury."

The Hon'ble MR. COWIE said that, as he had the honour of a seat in the Select Committee on this Bill, and had signed its report without reservation, he would say nothing more on the present occasion than to record his sincere belief that those gentlemen—and among them were many esteemed friends of his own—who had taken up the idea that the abolition of the Grand Jury was tantamount to the destruction of one of the strongholds of British liberty, would, under the influence of the provisions which the present Bill contained, before long be ready to admit that they were mistaken.

The Hon'ble MR. CUST said that he gave his entire and hearty support to the measure now before the Council. The Hon'ble Member who introduced the Bill had, on more than one occasion, explained the reasons and objects of the Bill. He (Mr. Cust) could only speak from personal experience of twenty years in the Mofussil, to the absolute necessity of some such measure, and he trusted that this was only the first of a series of measures, by which local tribunals would be provided in every part of India for the trial of every class of Her Majesty's subjects; for it was really an anomaly that we should provide tribunals, and Codes of Criminal Procedure, for the trial of the Natives of India, and the subjects of European friendly States, and American citizens, and have to send Englishmen many hundred miles to be tried in the Presidency Towns.

As regarded the Grand Jury, sufficient reasons had been shown for its abolition in the Presidency Towns; and as regarded its extension to the local Courts, the first objection was, that there would be no means of collecting a Grand Jury which would not consist almost entirely of Natives; and the second objection was, that, when so collected, a Grand Jury would only be a cause of delay and an obstacle to justice.

The Hon'ble MR. BULLEN said that he could not deny that a strong case had been stated against Grand Juries, and that it was difficult to meet many of the objections which had been raised. In spite, however, of the eloquence of the Hon'ble Mover in spite of his arguments as to the theoretical inutility of Grand Jury, he confessed to an instinctive apprehension that if they were abolished, it would some day be found that an institution of great practical use and value had been lost. He did not, however, suppose that any thing he could now say would affect the fate of the Bill, and he would not therefore take up the time of the Council by repeating arguments which he had already urged in Committee.

The Hon'ble MR. ANDERSON—"As I took part in the former debate upon this Bill, and mentioned some of the reasons which induced me to give it my support, I feel it due to that portion of the public which is opposed to the abolition of Grand Juries to state more in detail, though as briefly as I can, the grounds on which I still approve of that provision in the Bill. In doing this, I feel I can add nothing to what has been, at various times, advanced by my Hon'ble friend the mover, but I am anxious, on a question in which the public has taken considerable interest, to endeavour to show that, if unable to convince others, I have at least convinced myself. In the former debate I rested my support of the Bill principally on the consideration that the panel of the Petty Jury was not equal to the duty imposed upon it, that it had been starved by the constitution of another panel, and that it was of obvious importance that the admirable material now squandered on Grand Juries should be made available for the performance of duties the gravity of which could not be exaggerated, and which now devolved upon Petty Juries. I still regard this as a practical argument of no inconsiderable force; I still think that a Legislature is not justified in remaining passive when it sees the dearest interests, the lives and liberties of the governed, hang upon the verdicts of those whose previous training and habits of thought have not fitted them for the office, while gentlemen of intelligence and education take no other part in the administration of justice than what is implied in the solemn trifling, or the pernicious meddling, as the case may be, of Grand Jury investigations. It may, however, be urged that this is only an objection to an accident of the institution; still the accident is one of exces-

sive prominence in the country for which we are legislating. But my objection is not merely to an accident—it is to the institution in its essence. I hold it to have almost every vice which can be predicated of a judicial institution. It is secret, irresponsible, untrained, not guided by judicial wisdom and experience, unaided by legal exposition, keeping no record, taking evidence under imperfect sanctions, passing decisions without the assignment of any reason. I do not impute to it corruption, but I do say that at the only time when Grand Juries exercised any marked and decisive influence on public affairs, they were corrupt. To an institution thus honeycombed with defects, it is the theory, according to Lord Keeper Guilford and Chief Justice Pemberton, to assign a very slight power—according to Lord Somers, a very great power; but whatever be the theory, it can, if it chooses, exercise an enormous power: it can dam up the whole stream of public justice, and its proceedings cannot be questioned. I have said that at the only time when Grand Juries exercised any decisive influence on public affairs, they were corrupt. This leads me to examine an assertion which has been very frequently put forth in the discussion excited by this Bill, that at a certain period of our national history, the Grand Jury institution vindicated our constitutional liberties, and operated as a bulwark against despotism. I cannot assent to this proposition. All those verdicts which Englishmen regard with gratitude and pride, were verdicts of Petty Juries. The Jury which in Lilburne's case—to use the expression of Mackintosh—defied the bayonets of Cromwell, was a Petty Jury. The Jury which in Penn's case was locked up without food for forty hours, and persisted in finding Penn only guilty "of speaking in Gracechurch Street," was a Petty Jury. And I think that Lord Erskine, in his noble speech for the Dean of St. Asaph, stated but the simple truth when he said that to Edward Bushell, the foreman of that Jury, who maintained his opinion under the vilest threats from the Bench, and suffered fine and imprisonment on account of the verdict, we owe almost as much as we do to John Hampden. It was the noble firmness of this humble Englishman which established the great principle of the immunity of Juries. The verdicts in the case of the seven Bishops, in the case against the "Craftsman" for publishing a paper by Lord Chesterfield, in Woodfall's case, in the case of the Dean of St. Asaph, and in Hardy and Horne Tooke's case, were all verdicts of Petty Juries. The decision against general warrants in Wilkes' case was a judgment from the Bench. When then occurred the great service of the Grand Jury institution? I presume the period alluded to is that which in the ballads and pamphlets of the time was called the "reign of Ignoramus," the shrievalty of Bethell and Cornish in 1680-81, and the shrievalty of Pilkington and Shute in 1681-82. The representative case is that of Lord Shaftesbury—there are several others, but that is the one chiefly remembered. Now I contend that Lord Shaftesbury and others of his party owed their deliverance, not to the fact that the Jury was either a Grand or a Petty Jury, it might have been, as far as truth was concerned, either the one or the other, it might have been a Court of Areopagus, or a Sanhedrim, or a Vehmic tribunal of the steel and cord, or any other authority which fancy may suggest, but they owed their deliverance simply to the fact that the Jury was a packed Jury. Now this a fact as notorious to those who really know the history of the time as the battle of Hastings or the execution of Charles the First. The panels for the Juries, both Grand and Petty, were arranged by the Sheriffs. Dryden delineates Bethell one of the Sheriffs in his finest poem of Absolom and Achitophel, under the name of Shimei—

> "If any dare his factious friends accuse,
> He packs a Jury of dissenting Jews,
> Whose fellow feeling in the goodly cause
> Will save the suffering Saint from human laws.
> During his office treason was no crime;
> The sons of Belial had a glorious time."

I of course have no sympathy with the political principles of Dryden, and do not cite his lines as conclusive evidence of a fact, but I do say that every historian of mark has regarded the packing of Juries at the time under discussion as a point on which no room is left for doubt. The panels then were prepared by the Sheriffs, and so perfectly safe did Shaftesbury feel within the jurisdiction of the city, so perfectly unsafe did he feel everywhere else, that he took excellent care never to go a mile from his house in Aldersgate Street. College, the unfortunate enthusiast who was called the Protestant Joiner, was not so prudent. A Bill preferred against him was ignored by the London Grand Jury, but he was rash enough to join in a procession and to make a foolish speech at Oxford, when the King was holding the Parliament in that city. He found, at the cost of his life, after a trial of, if possible, more than the ordinary brutality of that hateful reign, that the institution of Grand Juries had no saving virtues beyond the liberties of the city of London. But the packing of Grand Juries was so flagrant, that the Court determined at all risks to have Sheriffs in its own interest. By a device too long to explain now, of inducing the Lord Mayor to drink to a gentleman as Sheriff, and by a riot at the Poll, it succeeded in returning Sir Dudley North and Mr. Rich as "*de facto*" Sheriffs. Did Shaftesbury—did the "daring pilot in extremity"—then trust to this vaunted institution? Not for an hour. He fled at once in disguise to Holland, and ended his turbulent life a few months after as a citizen of that Batavian Republic which, in his pride of power, he had threatened to destroy. But did Russell, Sydney, John Hampden the younger, did Cornish, who had packed so many Grand Juries—did they find any protection from the institution? It is a mere abuse of language to say that Grand Juries vindicated our liberties. The Grand Juries which spared Shaftesbury were chosen by the same artifices, under the same auspices, as the Grand Juries which were not reluctant to leave innocent blood to be shed by the manifold infamies of Oates and Dangerfield and Bedloe. To support Grand Juries by an appeal to the "reign of Ignoramus" is as if one were in the present reign to assert the reality of the Popish Plot on the authority of the evidence of Titus Oates, or to question the lofty character of Algernon Sydney by a reference to the charge of Sir George Jeffreys.

I contend then that no argument can be drawn from history in favour of Grand Juries, but I would wish now to mention some of what seem to me the dangerous incidents inseparable from the institution. I would, however, first premise that if a Grand Jury ignore a Bill on the recommendation of a Judge, its operation is superfluous,

and the duty had better be left to the Judge; but that if a Grand Jury ignore a Bill, without the recommendation of the Judge, its operation is mischievous. I will first take the large class of cases,—and I should remark, that I only intend to allude to large classes of cases—in which the witnesses are either unwilling or can be tampered with. It is obvious that the interim between the commitment by a Magistrate and the investigation of a Grand Jury affords an ample opportunity for buying off hostile witnesses, for allowing such witnesses to be "got at"—I believe that is the technical phrase. If a witness of this kind chooses before a Grand Jury to omit a material part of his testimony, or even entirely to deny it, what remedy is there? You cannot assign perjury on his second statement. But take the larger class of unwilling witnesses, by which I mean those who will tell the truth, and nothing but the truth, but who will not, except under severe pressure, tell the whole truth. These are not the mere hard swearers of our Courts, they are men who have some regard for truth, but they do not consider themselves bound to disclose damaging facts, unless directly questioned regarding them. The prisoner may be a relative, a friend, a comrade: a feeling of honour may be aroused, or an idea that it is unlucky to give evidence that may lead to a conviction. Now witnesses if this kind require very discriminative treatment: their examination has, in the English Courts, been almost elevated into a science. I leave it to the Council to imagine how far the lubricity of a witness of this kind is tested in the Grand Jury room. But there is another considerable class of cases in which the character of the prosecutor is as much at stake as the character of the prisoner. Now it is not a pleasant reflection to those who feel a real interest in the due administration of justice when a prosecutor is able to say "The character of either the prisoner or of myself was to stand or fall by a certain issue, I was ready to place myself upon God and my country as to that issue. I had convinced an impartial Magistrate that my case demanded the most ample investigation. I had retained Counsel to assist me. I was prepared to meet my adversary in open Court before the Judges of the land, when by some process over which neither I nor any one else had any control, my case suffers an estoppel, how, why, I know not, '*quibus indiciis, quo testo probavit*;' there was not even a graud and verbose epistle, there was simply 'not a true Bill,' the prisoner got a clean tablet, and I was disgraced." Is this satisfactory? Foreign Jurists have regarded the English system of trial as one carefully devised for the escape of the guilty. It is very meet and right that every reasonable presumption should be in favour of the prisoner; it is very meet and right that every humane indulgence should be extended to him. It is the just pride of an Englishmen that this is so, whatever may be the cost. But it is not meet and right that, in addition to all the advantages which our merciful system grants to the prisoner, he should have the safeguard which is implied in the mysterious, incomprehensible, and, for all the public knows, the sortitionic agency of a Grand Jury. I confess I regard the system with the same feeling with which Crassus viewed the diviners, "*mirari se quod haruspex haruspicem sine risu auspicere posset*," I cannot make out how, when the Sessions are on, one Grand Jury-man can look at another without laughing.

But there is a class of cases in which another element exercises considerable influence over both Grand and Petty Juries, but which, in the latter instance, is in a great measure controlled by the wisdom and experience of the Judges—the element of sentiment. There are many cases in which the facts on the surface are very plain and very easily proved, but a question of great complexity then arises as to whether the facts are not susceptible of an explanation consistent with the innocence of the prisoner. Now up it is at this conjuncture at which the functions of a Grand Jury should really have ceased, that the dominion of sentiment commences. But I can explain my meaning more clearly by mentioning a case which excited considerable attention at the time, and was alluded to by Sir Frederick Thesiger (now Lord Chelmsford) when in 1857 he introduced his Bill for the abolition of Metropolitan Grand Juries. The Medical attendant of a County Lunatic Asylum was assaulted by a patient; he in consequence directed the patient to be placed under a cold shower-bath for thirty minutes, and then to have a dose of tartar emetic administered to him. The bath and the dose were soon given, and the man died within an hour. The case was sent for trial by one of the most able Magistrates in London, the present Chief Magistrate at Bow Street, Sir Thomas Henry, and the Grand Jury ignored the Bill. Now this, as Sir Frederick Thesiger said, was a case which demanded the most complete and unreserved enquiry. Such an enquiry might very probably have led to the same result as the proceedings of the Grand Jury, but the ends of justice and the interests of the public would then have been satisfied. Now this case represents a large class which Grand Juries for sentimental reasons will not permit to be tried. I might go on multiplying instances in which justice is defeated by the action of Grand Juries. It will be sufficient for me now to say that every lawyer in modern times who has studied the subject, has pronounced against Grand Juries. I will not merely allude to the Law Commissioners and to Jurists, whose opinions every thinking man must regard with reverence, but to men of the highest practical experience, to the late Lord Denman, who, when Common Serjeant, gave his opinion on the subject in the Edinburgh Review, to Lord Chelmsford, who was twice Attorney General, and to Mr. Stuart Wortley, Solicitor General under Lord Palmerston's former administration, who has paid the greatest attenion to Criminal Law and its administration, and who, when Recorder of London, pronounced Grand Juries to be useless and obstructive.

There are two other points to which I would wish to advert. The one is the assertion that the Grand Jury is a time-honoured institution which should not be rudely assailed. On this, I would remark that, placing aside the consideration that the Grand Jury is not now what was originally contemplated, a sort of inquisition, in some degree resembling our coroner's inquest, and that so far from being the public accuser or prosecutor as was at first intended, it is rather a committee of safety for prisoners—placing these considerations aside, I submit that all who know our legal history are aware that our Criminal Law and Procedure, though admirably administered, is still a very imperfect machine, and that this machine has, during the present century, been the subject of

continual experiment and improvement. It is not fifty years since the time-honoured institution of trial by battle was abolished. It is not forty years since sheep-stealing ceased to be a capital crime. It is not thirty years since prisoners charged with felony were allowed to be defended by Counsel, and since the time-honoured maxim of the Judge being the prisoner's Counsel was exploded. It is hardly twenty years since the offences of forestalling and regrating were abolished. It is not ten years since divorce on account of adultery ceased to be a luxury of the very wealthy.

The other point to which I would allude is the suggestion that the institution has not been abolished in England, and should therefore not be abolished here. Now, apart from the different circumstances of the two countries, I would urge that the system has been virtually condemned in England; the second reading of Sir F. Thesiger's Bill was carried by a majority of two to one, and the measure was only withdrawn on account of the approaching close of the Session. Early in the succeeding Session Sir F. Thesiger was raised to the Peerage. The present Chancellor has stated that he approves of the abolition of Grand Juries, but wishes the measure to be coincident with the appointment of a public prosecutor; this consideration, and the complication arising from the natural and reasonable wish to maintain the system in the counties, have retarded the long-desired reform in England. But beyond this consideration, I am clearly of opinion that it is our duty here to take advantage of the freedom of legislation, which the great field of India affords, to look only to what is right and useful, and not to swaddle a country which, in relation to our rule, is still a young country, with the old clothes of ancient systems, but to enable it to feel its life in every limb, and to assume a nobler part in the great drama of nations.

I have designedly confined my attention to that portion of the Bill which has excited objection. It remains for me only to say that I regard the Bill in its integrity as an admirable measure, as one representing real and safe progress in a most important department of Government. I confess I shall be glad to see the day when the same Judge who tries the Native shall try the European. I fully admit that this cannot be soon. But if it be eventually found that careful selection and special training cannot produce in the Civil Service Judges in whom the community will have the same confidence as those trained in Westminster Hall, I confess that, notwithstanding my affection for that service with which I have had an hereditary connexion for sixty years, I shall range myself with those who think that all Judges should be Barristers. That there will be some disadvantage in this change I am well aware, but still any change will be better than that the growing intelligence of the natives of this country should have reason to allege that we commit the protection of their lives and liberty and the redressal of their wrongs to an inferior agency to that which we demand for Europeans."

The Hon'ble Mr. Harington said that there being no motion before the Council for the amendment of any part of the Bill, altered as proposed by the Select Committee, of which he had the honour of being a Member, he would not occupy the time of the Council with remarks on any of the details of the Bill. Having carefully considered the arguments which had been advanced both for and against the particular Sections of the Bill to which reference had been made in the present debate, he felt bound to say that he was prepared to give to the Bill, as it stood, his unqualified support. He entirely concurred with what his Hon'ble Colleague Mr. Anderson had said in favour of the Bill. He believed that the Bill would be a most useful addition to the Statute Book, and whatever differences of opinion existed as regarded some of the provisions of the Bill, he felt sure that all would rejoice that it would be the means of removing, to a considerable extent, the reproach which had so long attached to the Indian Government, that crimes were either committed by European British subjects in the Mofussil with impunity, or that when they were prosecuted, the prosecution not unfrequently entailed upon the whole of the persons concerned, particularly the accused, if he proved innocent of the charge, an amount of hardship which was almost as great a reproach to the Government as the other branch of the alternative.

The Hon'ble Sir Charles Trevelyan said that he had seen this question opened under Lord William Bentinck, and he esteemed it a privilege that he should be able to take some part in its being closed under Sir John Lawrence. There never was any real doubt as to the advantages to be expected from the settlement of Europeans in the interior of India. The only question was how the protection of the Natives could be reconciled with the maintenance of the just and necessary rights of the Europeans. The clauses of this Bill which provided for the sending of Judges of the High Courts under Commission for the trial of offences committed in any part of British India, and the measures in progress for the formation of independent Courts of a similar character at Allahabad, Lahore, and Karáchi, would solve that difficulty. Justice, if not brought to every one's door, would, at any rate, be easily accessible to every one in India, and the scales of justice would be firmly and impartially held by professionally trained Judges, assisted by an English Bar and by an Indian Bar, which, year by year, was approximating to the English standard. He entirely agreed with the Committee that what related to the abolition of the Grand Jury was the least important part of the Bill. With all the advantage of ancient prestige and established habit the Grand Jury system barely held its ground in England, and it was totally unsuited to the interior of India. He was persuaded that the provision which the Bill made for the constitution of Juries of twelve, selected, as described by his Hon'ble friend (Mr. Maine), from the small but highly qualified European class in the interior, delivering their verdict either by a unanimous decision or by the decision of a majority of nine concurred in by the Judge, would be found, after a short trial, to be a far sounder institution than the plan, now in operation at the Presidency Towns, of two Juries, one a Grand Jury, and the other a Petty Jury.

The Hon'ble the Maharaja of Vizianagram said that the inutility of the Grand Jury system had been so ably discussed, and its disadvantages so fully pointed out by his Hon'ble and learned Colleague, Mr. Maine, that he could hardly do more than give his unqualified assent to all that

he had advanced on the subject, and to express a hope that the Bill for the abolition of Grand Juries in the Presidency Towns, in its amended form, might be passed into law.

One immediate beneficial result that was likely to follow the abolition of the Grand Jury, was the opportunity it would afford for the improvement of the Petty Jury system. According to the plan which had hitherto obtained, not only here, but in Madras and Bombay, little discrimination seemed to have been exercised in empanelling Petty Jurors. The Petty Jury list had been made up of men who had not always represented the independence, intelligence, and other qualifications essential to the proper and conscientious discharge of the duties of Jurors. The consequence had been, that the frequency of their failures and shortcomings had led the admirers of the Jury system to deplore the evil as much as though trial by Jury did not exist at all. By the abolition of Grand Juries, the *matériel* of which they were composed might be made use of to strengthen and support the Petty Jury.

The Hon'ble Mr. Maine :—"Sir, as there is no serious opposition to the Bill, there is really nothing to reply to. But I hope the Council will not refuse me the pleasure of thanking my Hon'ble friend Mr. Anderson for the eloquence with which he has exposed a considerable historical fallacy: and there is also a point on which I should be glad to be permitted to offer some explanation. Sir, in all the controversy on this Bill—a controversy which has been conducted with remarkable courtesy throughout,—there has been only one incident of which I have the least reason to complain. A remark of mine that Grand Juries are an obstruction to justice, was pressed on the Grand Jury of a particular Presidency Town as if it had been a special aspersion on Indian Grand Juries. Now, Sir, those words are simply and solely a quotation from Jeremy Bentham; and I assert distinctly that I have said nothing on the subject of Grand Juries which is inconsistent with the exercise of the utmost intelligence and the possession of the utmost conscientiousness on the part of the Grand Jurors. I freely admit that in quiet and ordinary times nothing worse can be charged against a Grand Jury than this—that it starves the Petty Jury and does the Magistrate's work over again for him. It is a costly and complex machine, absorbing the greatest part of the proprietor's capital, but turning out the fabric at one end in exactly the same state as it came in at the other. But in periods of extraordinary excitement, when class is set against class or party against party, and when there is a vague feeling abroad that everybody must be up and striving, then it is so ill-designed and its parts are so ill-related to one another, that it works awry and produces the monstrous results described in Mr. Ritchie's papers.

Sir, I am not insensible to the force of the objection which fell from my Hon'ble friend Mr. Bullen, that, however plausible be the arguments used, we are nevertheless destroying an honoured institution which is felt at home to be a safeguard of liberty. Sir, I cannot help thinking that much that has been heard from home since this discussion commenced must have tended to modify the opinions once entertained in Bengal as to the extraordinary value attached by the English to the Grand Jury. I speak, not in irony or sarcasm, but in all seriousness, when I say that I attribute much of what I must call the extraordinary exaggeration which was once current here on the subject, to the fact that perhaps the majority of Europeans in India belong to nationalities, especially Scottish, which have no Grand Jury in their natural home, but which, indeed, have that which is the very antithesis and contradictory of a Grand Jury—a system of public prosecutors. But, Sir, the opinion of Scotchmen who have really studied the subject may be gathered from a speech of the Lord Advocate which I read the other day. He was commenting on some proposal which appeared preposterous both to him and to his audience, for introducing into Scotland some fragment of English law; and he proceeded to say that really if things went on in that way, there would some day or other be somebody actually proposing to transplant into Scotland that institution condemned by every Jurist of credit, the Grand Jury. And now, Sir, as to the opinion entertained of Grand Juries in England. My observation leads me to believe that in all cities, in every part of the country which has the remotest resemblance to the Presidency Towns of India, Grand Juries are intensely disliked. They are looked upon as a waste of time and an outrage upon the common sense of men of business. In the counties, however, they are not unpopular, but their popularity is wholly unconnected with their judicial functions. Mr. Stephen appears to me to have exactly expressed the truth when he speaks of the enquiry before the Grand Jury 'as a mere form which nobody would wish to be continued unless for the social advantages which attend the connection of the class from which Grand Jurors are taken with the administration of Criminal Justice.' Sir, the country gentlemen, who in any other country than England would be a part, and not the lowest part, of the aristocracy, cannot reasonably be expected to serve on Petty Juries, but they are not unwilling to form part of a splendid ceremony. They come into the county town to meet the Judge and listen to his address, and thus add dignity to what is the most dignified solemnity among English usages—a country assize. Moreover, a County Grand Jury, it must be remembered, consists of the very same persons who, in another capacity, may be said to govern the county, who, assembled at quarter-sessions, tax the county, direct its jail discipline, and administer its public works. Hence there is a clear advantage in the discussion which their meeting facilitates, and, besides, their power of presentment is of not inconsiderable value, since it enables them to bring up any part of the county which is backward, or which tries to evade its duties, to the level of the rest. But as regards their judicial functions, I never heard that they did more than satisfy Mr. Anderson's canon and find or ignore Bills exactly as the Judge directed them. I am bound, too, to add that if the Grand Jury were defended upon some grounds which have been advanced on its behalf in India, the county gentlemen who, be it remembered, have interests of their own to protect, would be the first to acknowledge that it could not exist six months longer.

Sir, I am not so blind as not to see the true source of the opposition which once showed itself against this measure. I should think more meanly than I do of the intelligence of my

countrymen if I considered them incapable of feeling the force of some of the objections to the Grand Jury system—objections of which the worst that has been said is that they are theoretical, though they have in fact occurred, not simply to the great speculative Jurist Bentham, but to every experienced lawyer who has attended to the subject, to Lord Denman, to Lord Campbell, and to Lord Brougham—all honoured names in the history of our criminal law—objections so strong that when they have once been stated, nobody who possesses the faculty of distinguishing a principle from a platitude will ever venture to defend the Grand Jury. But, Sir, the feeling which once disclosed itself was, I feel sure, something like this: here is another institution in which the non-official class has accidentally attained predominance, swept away by an all-absorbing Government. Now, Sir, if the abolition of the Grand Jury had stood by itself, I should have had some sympathy with that feeling. But it would be just, and even more wise than just, to observe how steadily the current of legislation has recently set in the other direction. There are those two seats at the Council-board which have been reserved by law to my two Hon'ble friends at the other end of the table; and I take the liberty of saying, in reply to observations which I should be inclined to describe as somewhat unmannerly had they been seriously intended, that there are no more influential voices in discussion than those of my Hon'ble friends whenever they choose to give us the benefit of their advice, either in Council or Committee. There are also the similar seats reserved in the local Councils, and, lastly, there are those great Municipalities rising up all over India in which a practical preponderance is enjoyed by the non-official community. Sir, it seems to me that it is only the hard measure which new institutions get as compared with old, that can account for the opinion that the British Crown and British Parliament have recently been indifferent to the just claims of non-official Europeans. For my part I would go still further. I attach the utmost importance to the association of non-officials with officials in the administration of justice. My Hon'ble friend the Lieutenant Governor proposed to try all minor cases in the Presidency Towns by a bench composed chiefly of non-official Magistrates; and though I saw difficulties in the way, I was in favour of the proposal. In the Statement of Objects and Reasons appended to the original Bill, I myself shadowed forth a plan for joining some members of the non-official community with the Zillah Judge in the trial of offences by Europeans, too petty to be reserved for a Judge on circuit. If there be any fragment of truth at the bottom of these miserable assertions of the inveterate hostility of class to class—assertions which seem to me to create the very feeling which they affect to convey—I should expect them to disappear in the common discharge of a most sacred duty. Nor am I without hope that my Hon'ble friend at my side, Mr. Harington, may find room in his Code of Civil Procedure for some system of Civil Juries in the Presidency Towns. We have here as good material for such Juries as exists any where in the world, and if they were established, it would not be matter of surprise if they came to rival those London Juries who, under the guidance of Lord Mansfield, founded the Commercial Law of England."

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 20th March 1865.

Government of Fort St. George.

Cinchona Operations in the Neilgherries.

Report on the Number and Condition of Cinchona Plants on the Neilgherries on the 31st January 1865.

Species.	Botanical Names.	Commercial Names.	No. of Plants.	Value per lb. of Dry Bark in the London Market.	Remarks.
				s. d. *s. d.*	The number of plants permanently planted out in the plantations remains the same as last month, namely, 1,65,351.
1	C. Succirubra ...	Red Bark ...	1,44,340	2 6 to 8 9	
2	C. Calisaya ...	Yellow Bark ...	2,580	2 10 to 7 0	
3	C. Officinalis Var Condamenia (C. Uritusinga)	Original Loxa Bark	2,981	2 10 to 7 0	
4	Ditto. Var Bonplandiana (C. Chahuarguera)	Select Crown Bark	3,34,716	2 10 to 7 0	The increase by propagation is 17,231, being 2,422 plants under the average of the last six months, making the total number of plants at the end of the month 5,16,683.
5	C. Crespilla ...	Fine Crown Bark...	2,498	2 10 to 6 0	
6	C. Lancifolia ...	Pitayo Bark ...	30	1 8 to 2 10	
7	C. Nitida ...	Genuine Grey Bark	8,500	1 8 to 2 9	
8	C. Species without name ..	Fine Grey Bark ...	2,786	1 8 to 2 10	
9	C. Micrantha ...	Grey Bark ...	14,455	1 8 to 2 9	
10	C. Peruviana ...	Finest Grey Bark...	3,372	1 8 to 2 10	
11	C. Pahudiana ...	Unknown ...	425	Worthless.	
	Total number of plants ...		5,16,683		

TABLE II.

Memorandum of the growth of eleven plants of C. Succirubra, planted on the 2nd Denison Plantation at Neddivattum, on the 30th August 1862.

No. of Plants.	Height in inches when planted on the 30th August 1862.	Height in inches on the 31st Dec. 1864.	Height in inches on the 31st Jan. 1865.	Growth in inches during Jan. 1865.	By whom planted.
1	23	112	113¼	1¼	His Excellency Sir W. Denison.
2	16½	101	102	1	
3	19	104½	105¼	0¾	
4	15	98¾	99	0¼	
5	27	117	117½	0½	
6	20	89	90	1	
7	20	107¾	108	0¼	J. W. Brecks, Esq.
8	18	109	109½	0½	Dr. Sanderson.
9	20	111¼	112	0¾	J. D. Sim, Esq.
10	20	113	114	1	Lieutenant McLeod.
11	18	98¼	98¾	0½	P. Grant, Esq.
12	...	53	53½	0½	Plant cut down for bark.

Table II. exhibits the growth of eleven plants of Cinchona Succirubra planted out by His Excellency the Governor and other gentlemen at Neddivuttum on the 30th August 1862. The average growth of these plants during the month is ¾¼ths of an inch, being about ½ an inch above the growth of last month.

One of the two plants cut down on the 20th of March 1863, for the bark submitted to Mr. Howard for analysis, has made strong shoots of 53½ inches in height, giving the growth of ½ an inch during the month.

TABLE III.

Showing the height of twelve plants of C. Officinalis planted on the Dodabetta Plantation, at Ootacamund, on the 30th September 1863.

No. of Plants.	Height in inches when planted on the 30th September 1863.	Height in inches on the 31st Dec. 1864.	Height in inches on the 31st Jan. 1865.	Growth in inches during Jan. 1865.
1	19	62½	70	2½
2	14½	58½	61½	3
3	28	73	75	2
4	22	75	78½	3½
5	21½	69	71½	2½
6	28	76	79	3
7	22½	68	71	3
8	21½	68	71	3
9	21½	75	78	3
10	19½	71½	73	1½
11	24	72½	75	2½
12	24	71½	74	2½

The twelve plants of Cinchona Officinalis (a shrubby species) on the Dodabetta Plantation give an average growth of 2⅔ inches, or ⅓ of an inch below the growth of last month.

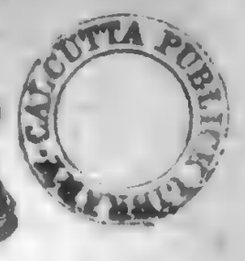
Not having issued any plants to the public during the month, the total number of plants distributed remains the same as last month viz., 52,857.

OOTACAMUND,
15*th February* 1865.

(Signed) W. G. McIVOR,
Supdt., Govt. Cinchona Plantations.

Printed and Published for the Government of India, by O. T. CUTTER, *at the Military Orphan Press.*

No. 12.



The Gazette of India.

Published by Authority.

CALCUTTA, SATURDAY, MARCH 25, 1865.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 7th March 1865, and is hereby promulgated for general information:—

Act No. IX of 1865.

An Act to amend Act No. XVI of 1864 (to provide for the Registration of Assurances.)

Preamble.

Whereas it is expedient to amend Act No. XVI of 1864 (*to provide for the Registration of Assurances*); It is enacted as follows:—

Addition to tenth Section of Act XVI of 1864.

1. The second sentence of the tenth Section of Act No. XVI of 1864 shall be read as if the words "or any other person whom the Registrar General may think proper to appoint" were inserted after the words "Civil jurisdiction of the District."

Addition to thirteenth Section of said Act.

2. The thirteenth Section of the said Act shall be read as if the following proviso formed part thereof: Provided also that the provisions of this Section shall not apply to any instrument relating to shares in a Joint Stock Company notwithstanding that the assets of such Company shall consist in whole or in part of immoveable property.

Act XVI of 1864, Section 25 repealed.

3. The twenty-fifth Section of Act No. XVI of 1864 is hereby repealed.

Registration of instruments affecting immoveable property situate in more than one District.

4. Every instrument affecting immoveable property situate in more Districts than one may be presented for registration to the District Registrar of any District in which any part of the property is situate, and it shall be the duty of such Registrar to register the instrument and to forward a copy thereof endorsed with an attestation stating the date on which it was registered and its number in his Register Book to the District Registrar of every District in which any other part of such property is situate, as well as to the Deputy Registrars subordinate to himself within the limits of whose jurisdiction any part of the property is situate. The District Registrar on receiving the copy shall forward a copy of the same and of the endorsement on the instrument to the Deputy Registrars subordinate to him within the limits of whose jurisdiction any part of the property is situate. Every District Registrar and Deputy Registrar receiving such copy as above shall register the same in the same manner as if the instrument had been presented to him in the first instance for registration.

Recognition of powers of attorney executed by persons absent from India without exact observance of provisions of Section 28 of Act XVI of 1864.

5. Every power of attorney not duly executed or attested in compliance with the terms of the twenty-eighth Section of Act XVI of 1864 shall, at any time within three months after the passing of this Act (but not afterwards), be deemed to be a power duly executed and attested within the meaning of the same Section, if the Registrar General, or in his absence the Deputy Registrar General, after making such enquiry as he shall think fit, shall have certified upon such power of attorney that he is satisfied with the execution thereof, and that, in his opinion, it should be taken as a power duly executed and attested as aforesaid: Provided that this Section shall not apply to any case in which the person who executed the power of attorney shall be still in India.

Act XVI of 1864, Sec. 40, repealed.

6. The fortieth Section of Act No. XVI of 1864 is hereby repealed.

Abstracts of instruments affecting immoveable property registered by Deputy Registrars to be forwarded through District Registrars to General Register Office.

7. An abstract of every original instrument affecting immoveable property registered in the Office of any Deputy Registrar shall, with an endorsement shewing the date on which it was registered and its number in the Register Book of such Deputy Registrar, be forwarded in duplicate within seven days from such date

to the District Registrar, who shall forthwith forward one of such duplicates to the General Register Office, and shall retain the other in his own Office, and enter it in a Book corresponding with the Book No. 1, 2, 3, or 4 as described in the fifty-sixth Section of the said Act XVI of 1864.

Appointment of Deputy Registrar General to perform duties of Registrar General under Sections 26 and 27 of Act XVI of 1864 during his absence on duty.

8. During the absence on duty of the Registrar General from the place where the General Register Office is established, it shall be lawful for him to appoint the District Registrar of such place, or, with the sanction of the local Government such other person as he shall think fit, to perform the duties of the Registrar General under the twenty-sixth and twenty-seventh Sections of the said Act. A District Registrar so appointed as aforesaid shall perform such duties in addition to his own duties as District Registrar. During such absence as aforesaid, such District Registrar or other person so appointed as aforesaid shall be styled the Deputy Registrar General, and may, in registering any instrument under the said twenty-sixth Section, use the Seal of the Registrar General.

This Act to be construed with Act XVI of 1864.

9. This Act shall be read and taken as part of the said Act No. XVI of 1864.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept., (Legislative.)

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 16th March 1865, and is hereby promulgated for general information :—

Act No. X of 1865.

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

Preamble.

Whereas it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India ; It is enacted as follows :—

PART I.

Preliminary.

Short Title.

1. This Act may be cited as "The Indian Succession Act, 1865."

This Act to constitute the law of British India in cases of Intestate or Testamentary Succession.

2. Except as provided by this Act or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of Intestate or Testamentary Succession.

Interpretation Clause.

3. In this Act, unless there be something repugnant in the subject or context.—

"Number." "Gender." Words importing the singular number include the plural : words importign the plural number include the singular ; and words importing the male sexinclude females.

"Person." "Person" includes any Company or Association, or body of persons, whether incorporated or not.

"Year." "Month." "Year" and "month" respectively mean a year and month reckoned according to the British Calendar.

"Immoveable property." "Immoveable property" includes land, incorporeal tenements and things attached to the earth, or permanently fastened to anything which is attached to the earth.

"Moveable property." "Moveable property" means property of every description except immoveable property.

"Province." "Province" includes any division of British India having a Court of the last resort.

"British India." "British India" means the territories which are or may become vested in Her Majesty or her successors by the Statute 21 and 22 Vic., Cap. 106, other than the Settlement of Prince of Wales' Island, Singapore, and Malacca.

"District Judge." "District Judge" means the Judge of a principal Civil Court of original jurisdiction.

"Minor." "Minority." "Minor" means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person.

"Will." "Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death.

"Codicil." "Codicil" means an instrument made in relation to a Will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the Will.

"Probate." "Probate" means the copy of a Will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator.

"Executor." "Executor" means a person to whom the execution of the last Will of a deceased person is, by the testator's appointment, confided.

"Administrator." "Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor.

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer Executive Government in such part; and "High Court" shall mean the highest Civil Court of Appeal therein.

"Local Government."

"High Court."

4. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried.

Interests and powers not acquired nor lost by marriage.

PART II.

Of Domicile.

5. Succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death. Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Law regulating succession to a deceased person's immoveable and moveable property, respectively.

Illustrations.

(*a.*) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(*b.*) A, an Englishman having his domicile in France, dies in British India, and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

6. A person can only have one domicile for the purpose of succession to his moveable property.

One domicile only affects succession to moveables.

7. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled: or, if he is a posthumous child in the country in which his father was domiciled at the time of the father's death.

Domicile of origin of person of legitimate birth.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Domicile of origin of illegitimate child.

9. The domicile of origin prevails until a new domicile has been acquired.

Continuance of domicile of origin.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Acquisition of new domicile.

Explanation.—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's Civil or Military Service, or in the exercise of any profession or calling.

Illustrations.

(*a*) A, whose domicile of origin is in England, proceeds to British India, where he settles as a Barrister or a Merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(*b*) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(*c*) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(*d*) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(*e*) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(*f*) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(*g*) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

11. Any person may acquire a domicile in British India by making and depositing in some Office in British India (to be fixed by the Local Government), a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

Special mode of acquiring domicile in British India.

Domicile not acquired by residence in a country merely as the representative of a foreign Government, or by residence with him as part of his family or as a servant.

12. A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Continuance of new domicile.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

Minor's domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile acquired by a woman on marriage.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domicile during marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Except in cases stated, minor cannot acquire a new domicile.

17. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

Lunatic's acquisition of new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Succession to a person's moveable property in British India, in absence of proof of his domicile elsewhere.

19. If a man dies leaving moveable property in British India; in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

PART III.

Of Consanguinity.

Kindred or consanguinity.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

Lineal consanguinity.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line. Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Collateral consanguinity.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

Persons held for purpose of succession to be similarly related to the deceased.

23. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother; nor between those who are related to him by the full blood, and those who are related to him by the half blood; nor between those who were actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

Mode of computing degrees of kindre

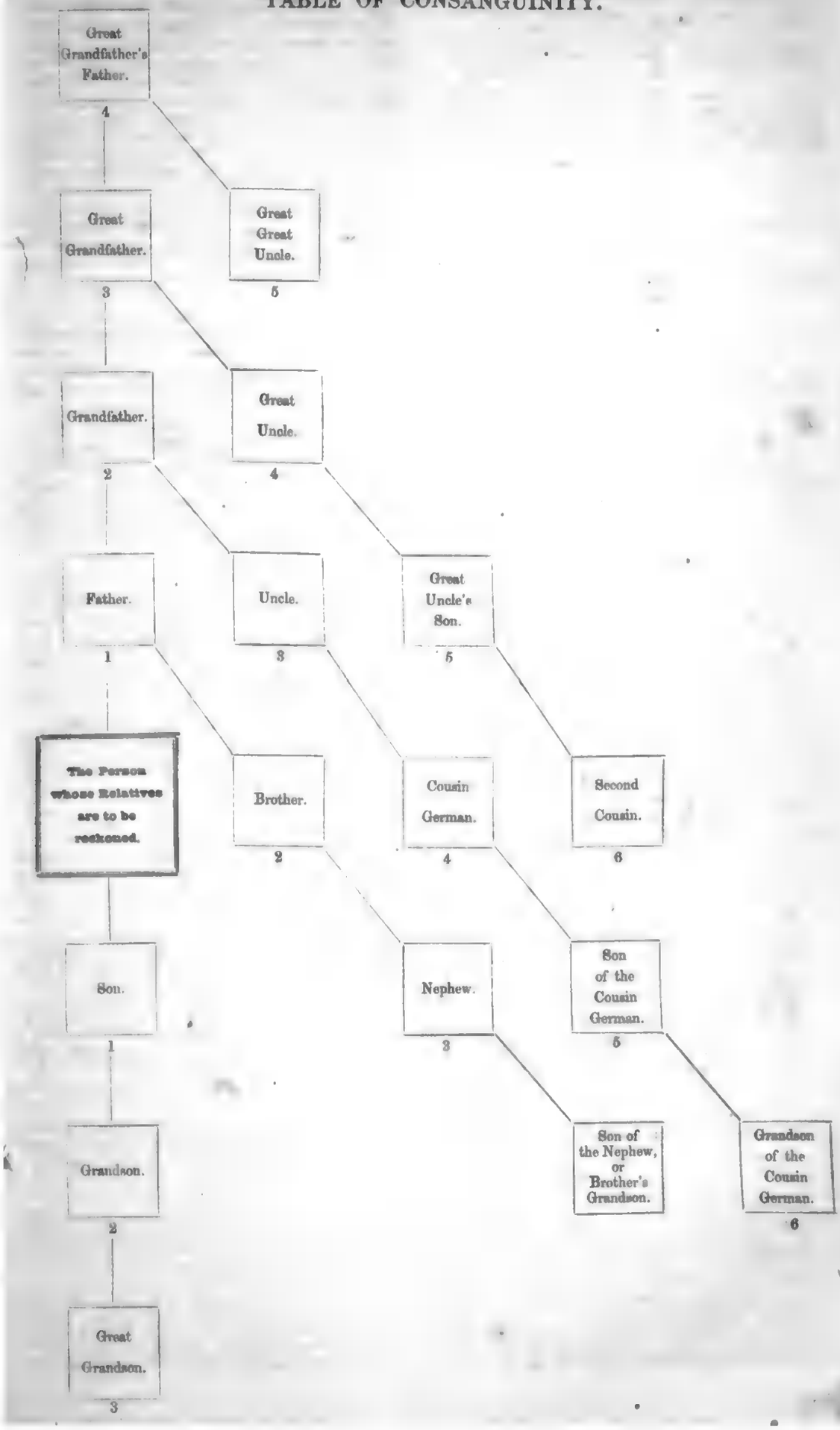
24. In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i. e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great uncle, for they are both in the sixth degree of kindred.

TABLE OF CONSANGUINITY.



PART IV.

Of Intestacy.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

As to what property a deceased person is considered to have died intestate.

Illustrations.

(*a.*) A has left no Will. He has died intestate in respect of the whole of his property.

(*b.*) A has left a Will, whereby he has appointed B his executor; but the Will contains no other provisions. A has died intestate in respect of the distribution of his property.

(*c.*) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(*d.*) A has bequeathed 1,000*l* to B, and 1,000*l* to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000*l* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l*.

26. Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Devolution of such property.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband's estate.

27. Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained. If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained. If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

Where the intestate has left a widow and lineal descendants, or a widow and kindred only, or a widow and no kindred.

28. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained: and if he has left none who are of kindred to him, it shall go to the Crown.

Where the intestate has left no widow, and where he has left no kindred.

PART V.

Of the Distribution of an Intestate's Property.

(a) Where he has left lineal descendants.

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follows:—

Rules of distribution.

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

Where the intestate has left a child or children only.

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

Where the intestate has left no child, but a grandchild or grand-children.

Illustrations.

(*a*) A has three children, and no more; John, Mary, and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(*b*) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(*c*) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

32. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

Where the intestate has left only great grandchildren or lineal descendants in a remoter degree.

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Where the intestate leaves lineal descendants not all in the same degree of kindred to him, and those through whom the more remote descend are dead.

Illustrations.

(*a*) A had three children, John, Mary, and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(*b*) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great-grandchildren.

(*c*) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(*b*) *Where the Intestate has left no lineal descendants.*

34. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows :—

Rules of distribution where the intestate has left no lineal descendants.

If the intestate's father be living, he shall succeed to the property.

Where intestate's father is living.

36. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Where intestate's father is dead, but his mother, brothers and sisters are living.

Illustration.

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half blood, takes one-fourth.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's life-time are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate's father is dead and his mother, a brother or sister, and children of any deceased brother or sister are living.

Illustration.

A the intestate leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half blood, who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

38. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the share which their respective parents would have taken if living at the intestate's death.

Where intestate's father is dead and his mother and the children of any deceased brother or sister are living.

Illustration.

A the intestate leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

39. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

Where intestate's father is dead, but his mother is living and there is no brother nor sister nor nephew.

40. Where the intestate has left neither lineal descendant nor father nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the share which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant nor father nor mother.

41. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Where intestate has left neither lineal descendant, nor parent, nor brother nor sister.

Illustrations.

(*a*) A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(*b*) A, the intestate, has left a great-grandfather or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*c*) A, the intestate, left a great-grandfather, an uncle, and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*d*) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

42. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child of such person, no money or other property which the intestate may during his life have paid, given, or settled to or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

Children's advancements not to be brought into hotch-pot.

PART VI.

Of the Effect of Marriage and Marriage Settlements on Property.

43. The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

Rights of widower and widow respectively.

44. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

No rights to property not comprised in an antenuptial settlement, acquired by marriage between a person domiciled and a person not domiciled in British India.

45. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or if he be dead or absent from British India, with the approbation of the High Court.

Settlement of minor's property in contemplation of marriage.

PART VII.

Of Wills and Codicils.

46. Every person of sound mind and not a minor may dispose of his property by Will.

Persons capable of making Wills.

Explanation 1.—A married woman may dispose by Will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a Will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a Will during an interval in which he is of sound mind.

Explanation 4.—No person can make a Will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(*a*) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his Will. A cannot make a valid Will.

(*b*) A executes an instrument purporting to be his Will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid Will.

(*c*) A being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes his Will. This is a valid Will.

47. A father whatever his age may be, may by Will appoint a guardian or guardians for his child during minority.

Testamentary guardian.

48. A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Will obtained by fraud, coercion or importunity.

Illustrations.

(*a*) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a Will in his, A's favour; such Will has been obtained by fraud, and is invalid.

(*b*) A by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(*c*) A, being a prisoner by lawful authority, makes his Will. The Will is not invalid by reason of the imprisonment.

(*d*) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(*e*) A being of sufficient intellect, if undisturbed by the influence of others, to make a Will, yet being so much under the control of B that he is not a free agent, makes a Will dictated by B. It appears that he would not have executed the Will but for fear of B. The Will is invalid.

(*f*) A being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a Will of a certain purport, and does so merely to purchase peace, and in submission to B. The Will is invalid.

(*g*) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a Will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his Will in the manner recommended by B. The Will is not rendered invalid by the intercession and persuasion of B.

(*h*) A with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his Will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

49. A Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will.

Will may be revoked or altered.

PART VIII.

Of the Execution of unprivileged Wills.

50. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his Will according to the following rules:—

Execution of unprivileged Wills.

First.—The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator or the signature of the person signing for him shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

Third.—The Will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the Will, or have seen some other person sign the Will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

51. If a testator, in a Will or Codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the Will or Codicil in which it is referred to.

Incorporation of papers by reference.

PART IX.

Of Privileged Wills.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a Will made as is mentioned in the fifty-third Section. Such Wills are called privileged Wills.

Privileged Will.

Illustrations.

(*a*) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged Will.

(*b*) A is at sea in a merchant ship, of which he is the purser. He is a mariner, and being at sea can make a privileged Will.

(*c*) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged Will.

(*d*) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged Will.

(*e*) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged Will.

(*f*) A, a mariner serving on a Military expedition, but not being at sea, is considered as a soldier, and can make a privileged Will.

53. Privileged Wills may be in writing, or may be made by word of mouth. The execution of them shall be governed by the following rules :—

Mode of making, and rules for executing, privileged Wills.

First.—The Will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a Will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his Will, if it be shown that it was written by the testator's directions, or that he recognized it as his Will. If it appear on the face of the instrument, that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his Will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his Will.

Fifth.—If the soldier or mariner shall in the presence of two witnesses have given verbal instructions for the preparation of his Will, and they shall have been reduced into writing in his life-time, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his Will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a Will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A Will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged Will.

PART X.

Of the Attestation, Revocation, Alteration and Revival of Wills.

54. A Will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband: but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

Effect of gift to attesting witness.

Explanation.—A legatee under a Will does not lose his legacy by attesting a Codicil which confirms the Will.

55. No person, by reason of interest in or of his being an executor of a Will, is disqualified as a witness to prove the execution of the Will or to prove the validity or invalidity thereof.

Witness not disqualified by interest or by being executor.

56. Every Will shall be revoked by the marriage of the maker, except a Will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not in default of such appointment pass to his or her executor, or administrator, or to the person entitled in case of intestacy.

Revocation of Will by testator's marriage.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Power of appointment defined.

57. No unprivileged Will or Codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or Codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Revocation of unprivileged Will or Codicil.

Illustrations.

(*a*) A has made an unprivileged Will; afterwards A makes another unprivileged Will which purports to revoke the first. This is a revocation.

(*b*) A has made an unprivileged Will. Afterwards, A being entitled to make a privileged Will, makes a privileged Will, which purports to revoke his unprivileged Will. This is a revocation.

58. No obliteration, interlineation, or other alteration made in any unprivileged Will after the execution thereof shall have any effect, except so far as the words or meaning of the Will shall have been thereby rendered illegible or undiscernible, unless

Effect of obliteration, interlineation, or alteration in unprivileged Will.

such alteration shall be executed in like manner as hereinbefore is required for the execution of the Will; save that the Will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the Will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the Will.

Revocation of privileged Will or Codicil.

59. A privileged Will or Codicil may be revoked by the testator, by an unprivileged Will or Codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged Will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged Will or Codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged Will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged Will.

Revival of unprivileged Will.

60. No unprivileged Will or Codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a Codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any Will or Codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the Will or Codicil.

Extent of revival of Will or Codicil partly revoked and afterwards wholly revoked.

PART XI.

Of the Construction of Wills.

Wording of Will.

61. It is not necessary that any technical words or terms of art shall be used in a Will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

Enquiries to determine questions as to object or subject of Will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a Will, a Court must inquire into every material fact relating to the persons who claim to be interested under such Will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(*a*) A, by his Will, bequeaths 1,000 rupees to his eldest son, or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the Will applies.

(*b*) A by his Will leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(*c*) A, by his Will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or misdescription of object.

63. Where the words used in the Will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect. A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(*a*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(*b*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(*c*) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(*d*) The testator gives his residuary estate to be divided among "his seven children," and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(*e*) The testator having six grandchildren, makes a bequest to "his six grandchildren," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(*f*) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the Will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

Rejection of erroneous particulars in description of subject.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the Will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Illustrations.

(*a*) A bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, but had no marsh lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh lands of the testator lying in L shall pass by the bequest.

(*b*) The testator bequeaths to A "his zamíndárí of Rampore." He had an estate at Rampore, but it was a taluk and not a zamíndárí. The taluk passes by this bequest.

66. If the Will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

When part of description may not be rejected as erroneous.

Explanation.—In judging whether a case falls within the meaning of this Section, any words which would be liable to rejection under the sixty-fifth Section are to be considered as struck out of the Will.

Illustrations.

(*a*) A bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh lands lying in L as were in the occupation of X.

(*b*) A bequeaths to B "his marsh lands lying in L, and in the occupation of X, comprising 1,000 bighás of land." The testator had marsh lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the Will, and such of the testator's marsh lands lying in L, as were in the occupation of X, shall alone pass by the bequest.

67. Where the words of the Will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Extrinsic evidence admissible in case of latent ambiguity.

Illustrations.

(*a*) A man having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the Will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(*b*) A, by his Will, leaves to B "his estate called Sultánpur Khurd." It turns out that he had two estates called Sultánpur Khurd. Evidence is admissible to show which estate was intended.

68. Where there is an ambiguity or deficiency on the face of the Will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

Illustrations.

(*a*) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his Will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the Will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the seventy-sixth Section.

(*b*) A bequeaths 1,000 rupees to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(*c*) A bequeaths to B rupees, or "his estate of ." Evidence is not admissible to show what sum or what estate the testator intended to insert.

69. The meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a Codicil is to be considered as part of the Will.

Meaning of any clause to be collected from entire Will.

Illustrations.

(*a*) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(*b*) Where a testator having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his Will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

70. General words may be understood in a restricted sense where it may be collected from the Will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the Will that the testator meant to use them in such wider sense.

When words may be understood in a restricted sense, and when in a sense wider than usual.

Illustrations.

(*a*) A testator gives to A "his farm in the occupation of B," and to C "all his marsh lands in L." Part of the farm in the occupation of B consists of marsh lands in L, and the testator also has other marsh lands in L. The general words, "all his marsh lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh lands in L.

(*b*) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a shipmate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(*c*) A, by his Will, bequeathed to B all his household furniture, plate, linen, china, books, pictures, and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

Where a clause is open to two constructions, that which has some effect is to be preferred.

72. No part of a Will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

No part of Will to be rejected, if reasonable construction can be put on it.

73. If the same words occur in different parts of the same Will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Interpretation of words repeated in different parts of Will.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Testator's intention to be effectuated as far as possible.

Explanation.—In the four last rules, the word Will does not include a Codicil.

Illustrations.

(*a*) A having ten shares, and no more, in the Bank of Bengal, made his Will, which contains near its commencement, the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the Will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(*b*) A having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a Codicil to his Will, and thereby after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(*c*) A, by his Will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same Will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(*d*) A, by his Will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same Will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(*e*) A, by his Will, bequeaths to B 5,000 rupees, and by a Codicil to this Will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(*f*) A, by one Codicil to his Will, bequeaths to B 5,000 rupees, and by another Codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(*g*) A, by his Will, bequeaths "500 rupees to B because she was his nurse," and in another part of the Will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(*h*) A, by his Will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the Will, an annuity of 400 rupees. B is entitled to both legacies.

(*i*) A, by his Will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Constitution of residuary legatee.

Illustrations.

(*a*) A makes her Will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, &c., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(*b*) A makes his Will, with the following passage at the end of it:—"I believe there will be found sufficient in my "banker's hands to defray and discharge my debts, which I "hereby desire B to do, and keep the residue for her own "use and pleasure." B is constituted the residuary legatee.

(*c*) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Property to which a residuary legatee is entitled.

Illustration.

A by his Will bequeaths certain legacies, one of which is void under the hundred and fifth Section, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his Will, A purchases a zamíndárí, which belongs to him at the time of his death. B is entitled to the two legacies and the zamíndárí as part of the residue.

91. If a legacy be given in general terms, without specifying the time, when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he dies without having received it, it shall pass to his representatives.

Time of vesting of legacy in general terms.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the Will that the testator intended that it should go to some other person. In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

In what case a legacy lapses.

Illustrations.

(*a*) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator; the legacy lapses.

(*b*) A bequest is made to A and his children. A dies before the testator or happens to be dead when the Will is made. The legacy to A and his children lapses.

(*c*) A legacy is given to A, and in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(*d*) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(*e*) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(*f*) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

A legacy does not lapse if one of two joint legatees die before the testator.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Effect in such a case, of words showing testator's intention that the shares should be distinct.

Illustration.

A sum of money is bequeathed to A, B, and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

95. Where the share that lapses is a part of the general residue bequeathed by the Will, that share shall go as undisposed of.

When lapsed share goes as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B, and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any child or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the Will.

When a bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

Illustration.

A makes his Will, by which he bequeaths a sum of money to his son B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his Will whereby he bequeaths all his property to his widow D. The money goes to D.

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Bequest to A for the benefit of B does not lapse by A's death in testator's lifetime.

98. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Survivorship in case of bequest to a described class.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(*a*) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the Will, leaving three children, C, D, and E. E died after the date of the Will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(*b*) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

(*c*) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(*d*) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the life time of A, C having made a Will, E having made no Will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(*e*) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E, and the representatives of C, in equal shares.

(*f*) A bequeaths 1,000 rupees to B for life, and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(*g*) A bequeaths 1,000 rupees to "all the children born or to be born" of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F, and G, to the exclusion of the after-born child of B.

(*h*) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

PART XII.

Of void Bequests.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Bequest to a person by a particular description, who is not in existence at the testator's death.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or if he be dead, to his representatives.

Illustrations.

(*a*) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator B has no son. The bequest is void.

(*b*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death, the legacy goes to C's son.

(*c*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(*d*) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e*) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

100. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the Will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Bequest to a person not in existence at the testator's death, subject to a prior bequest.

Illustrations.

(*a*) Property is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(*b*) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(*c*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life, and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect in the case of each daughter who marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(*d*) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rule against perpetuity.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations.

(*a*) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25, may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B, and the minority of the sons of B. The bequest after B's death is void.

(*b*) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(*c*) A fund is bequeathed to A for his life, and after his death to B for his life; with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18; but that if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(*d*) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

Bequest to a class, some of whom may come under the rules in the Sections 100, 101.

102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding Sections, or either of them, such bequest shall be wholly void.

Illustrations.

(*a*) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(*b*) A fund is bequeathed to A for his life, and after his death to B, C, D, and all other the children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease In all other respects the case is the same as that supposed in Illustration (*a*). The mention of B, C, and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

Bequest to take effect on failure of bequest void under Sections 100, 101, or 102.

103. Where a bequest is void by reason of any of the rules contained in the three last preceding Sections, any bequest contained in the same Will, and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(*a*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son, to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under Section 101. The bequest to B is void.

(*b*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under Section 101. The bequest to B is void.

Effect of direction for accumulation.

104. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death; and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(*a*) The Will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal together with the accumulations, shall then be divided between A, B, and C. A, B, and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(*b*) The Will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(*c*) The Will directs that the rents of the farm of Sultânpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(*d*) The Will directs that the rents of the farm of Sultânpur shall be accumulated for ten years, and that the accumulations shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(*e*) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the Will, but in consequence of B's minority.

Bequest to religious or charitable uses.

105. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the Wills of living persons.

Illustration.

A having a nephew makes a bequest by a Will not executed nor deposited as required—

For the relief of poor people;
For the maintenance of sick soldiers:
For the erection or support of a hospital;
For the education and perferment of orphans;
For the support of scholars;
For the erection or support of a school:
For the building and repairs of a bridge;
For the making of roads;
For the erection or support of a church;
For the repairs of a church;
For the benefit of ministers of religion;
For the formation or support of a public garden.

All these bequests are void.

PART XIII.

Of the Vesting of Legacies.

Date of vesting of legacy when payment or possession postponed.

106. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the Will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy. And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(*a*) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(*b*) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(*c*) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(*d*) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(*e*) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(*f*) A fund is bequeathed to A, B, and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B, and C, subject to be devested in case A, B, and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

Date of vesting when legacy is contingent upon a specified uncertain event.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens. A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible. In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the Will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necesary, to be applied for his benefit; the bequest of the fund is not contingent.

Illustrations.

(*a*) A legacy is bequeathed to D in case A, B, and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B, and C all die under 18, or one of them attains that age.

(*b*) A sum of money is bequeathed to A "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(*c*) An estate is bequeathed to A for life, and after his death to B, if B shall then be living, but if B shall not be then living, to C. A, B, and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(*d*) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(*e*) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(*f*) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(*g*) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and

after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(*h*) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(*i*) A leaves his farm of Sultânpur Khurd to B, if B shall convey his own farm of Sultânpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(*j*) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(*k*) A fund is bequeathed to A if B shall not make any provision for him by Will. The legacy is contingent until B's death.

(*l*) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(*m*) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Vesting of interest in a bequest to such members of a class as shall have attained a particular age.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

PART XIV.

Of Onerous Bequests.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Onerous bequest.

Illustration.

A having shares in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

110. Where a Will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

One of two separate and independent bequests to same person may be accepted, and the other refused.

Illustration.

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART XV.

Of Contingent Bequests.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the Will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Bequest contingent upon a specified uncertain event, no time being mentioned for its occurrence.

Illustrations.

(*a*) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(*b*) A legacy is bequeathed to A, and in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(*c*) A legacy is bequeathed to A when and if he attains the age of 18, and in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(*d*) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children," are to be understood as meaning in case B shall die without children during the lifetime of A.

(*e*) A legacy is bequeathed to A for life, and after his death to B, and "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

112. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the Will.

Bequest to such of certain persons as shall be surviving at some period not specified.

Illustrations.

(*a*) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(*b*) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(*c*) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(*d*) Property is bequeathed to A for life, and after his death to B and C, with a direction that in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

PART XVI.

Of Conditional Bequests.

113. A bequest upon an impossible condition is void.

Bequest upon impossible condition.

Illustrations.

(*a*) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(*b*) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the Will. The bequest is void.

Bequest upon illegal or immoral condition.

114. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Illustrations.

(*a*) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(*b*) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

Fulfilment of condition precedent to the vesting of a legacy.

115. Where a Will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations.

(*a*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(*b*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consept of B and C. A has fulfilled the condition.

(*c*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(*d*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(*e*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(*f*) A makes his Will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(*g*) A legacy is bequeathed to A if he executes a certain document within a time specified in the Will. The document is executed by A, within a reasonable time, but not within the time specified in the Will. A has not performed the condition, and is not entitled to receive the legacy.

Bequest to A and, on failure of the prior bequest, to B.

116. Where there is a bequest to one person and a bequest of the same thing to another if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(*a*) A bequeaths a sum of money to his own children surviving him, and if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(*b*) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

Case in which the second bequest shall not take effect on failure of the first.

117. Where the Will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

Illustration.

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

Bequest over, conditional upon the happening or not happening of a specified uncertain event.

118. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or, that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person. In each case the ulterior bequest is subject to the rules contained in Sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

Illustrations.

(*a*) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be devested and to go to B in case A shall die under 18.

(*b*) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a Will, the estate shall go to B. A disputes the competeny of the testator to make a Will. The estate goes to B.

(*c*) A sum of money is bequeathed to A for life, and after his death to B, but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be devested if he dies leaving a son in A's lifetime.

(*d*) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(*e*) A bequeaths to B the interest of a fund for life, and directs the fund to be divided, at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

Condition must be strictly fulfilled.

119. An ulterior bequest of the kind contemplated by the last preceding Section cannot take effect, unless the condition is strictly fulfilled.

Illustrations.

(*a*) A legacy is bequeathed to A, with a proviso that if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(*b*) A legacy is bequeathed to A, with a proviso that if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(*c*) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that if A dies under 18, or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Illustrations.

(*a*) An estate is bequeathed to A for his life, with a condition superadded that if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the Will.

(*b*) An estate is bequeathed to A for her life, and if she do not desert her husband, to B. A is entitled to the estate

during her life as if no condition had been inserted in the Will.

(c) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under Section 92, and A is entitled to the estate during his life.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen or not happen.

Illustrations.

(a) An estate is bequeathed to A for his life, with a proviso that in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood; he loses his life-interest in the estate.

(b) An estate is bequeathed to A, provided that if he marries under the age of 25 without the consent of the executors named in the Will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c) An estate is bequeathed to A, provided that if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(d) An estate is bequeathed to A, with a proviso that if she becomes a Nun she shall cease to have any interest in the estate. A becomes a Nun. She loses her interest under the Will.

(e) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that if B shall become a Nun, the bequest to her shall cease to have any effect. B becomes a Nun in the lifetime of A. She thereby loses her contingent interest in the fund.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh Section.

Such condition must not be invalid under Section 107.

123. Where a bequest is made with a condition superadded that unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect; but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Result of legatee rendering impossible or indefinitely postponing an act for which no time is specified and on the nonperformance of which the subject-matter is to go over.

Illustrations.

(a) A bequest is made to A with a proviso that unless he enters the army the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b) A bequest is made to A with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. Where the Will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect; the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Performance of condition, precedent or subsequent, within specified time.

Further time allowed in case of fraud.

PART XVII.

Of Bequests with Directions as to Application or Enjoyment.

125. Where a fund is bequeathed absolutely to or for the benefit of any person, but the Will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the Will had contained no such direction.

Direction that funds be employed in a particular manner following an absolute bequest of the same to or for the benefit of any person.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to purchase a commission in the Army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him, as if the Will had contained no such direction.

Direction that a mode of enjoyment of absolute bequest is to be restricted, to secure a specified benefit for the legatee.

Illustrations.

(a) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried, the representatives of each daughter are entitled to her share of the residue.

(b) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

127. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the Will, remains a part of the estate of the testator.

Bequest of a fund for certain purposes, some of which cannot be fulfilled.

Illustrations.

(a) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children; the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their

decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART XVIII.

Of Bequests to an Executor.

Legatee named as executor cannot take unless he shows intention to act as executor.

128. If a legacy is bequeathed to a person who is named an executor of the Will, he shall not take the legacy unless he proves the Will or otherwise mainfests an intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the Will, and dies a few days after the testator, without having proved the Will. A has manifested an intention to act as executor.

PART XIX.

Of Specific Legacies.

Specific legacy defined.

129. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Illustrations.

(*a*) A bequeaths to B—
"The diamond ring presented to him by C."
"His gold chain."
"A certain bale of wool."
"A certain piece of cloth."
"All his household goods, which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death."
"The sum of 1,000 rupees in a certain chest."
"The debt which B owes him."
"All his bills, bonds, and securit iesbelonging to him lying in his lodgings in Calcutta."
"All his furniture in his house in Calcutta."
"All his goods on board a certain ship then lying in the River Hooghly."
"2,000 rupees which he has in the hands of C."
"The money due to him on the bond of D."
"His mortgage on the Rampore Factory."
"One-half of the money owing to him on his mortgage of Rampore Factory."
"1,000 rupees, being part of a debt due to him from C."
"His capital Stock of 1,000*l.* in East India Stock."
"His promissory notes of the Government of India, for 10,000 rupees in their 4 per cent. loan."
"All such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company."
"All the wine which he may have in his cellar at the time of his death."
"Such of his horses as B may select."
"All his shares in the Bank of Bengal."
"All the shares in the Bank of Bengal which he may possess at the time of his death."
"All the money which he has in the 5½ per cent. loan of the Government of India."
"All the Government securities he shall be entitled to at the time of his decease."
Each of these legacies is specific.

(*b*) A having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.
The legacy is specific.

(*c*) A having property at Benares, and also in other places, bequeaths to B all his property at Benares.
The legacy is specific.

(*d*) A bequeaths to B—
His house in Calcutta.
His zamíndárí of Rampore.
His taluk of Rámnagur.
His lease of the Indigo factory of Sulkea.
An annuity of 500 rupees out of the rents of his zamíndárí of W.
A directs his zamíndárí of X to be sold, and the proceeds to be invested for the benefit of B.
Each of these bequests is specific.

(*e*) A by his will charges his zamíndárí of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamíndárí to D. Each of these bequests is specific.

(*f*) A bequeaths a sum of money to buy a house in Calcutta for B.
To buy an estate in Zillah Fureedpore for B.
To buy a diamond ring for B.
To buy a horse for B.
To be invested in shares in the Bank of Bengal for B.
To be invested in Government securities for B.
A bequeaths to B—
"A diamond ring."
"A horse."
"10,000 rupees worth of Government securities."
"An annuity of 500 rupees."
"2,000 rupees, to be paid in cash."
"So much money as will produce 5,000 rupees 4 per cent. Government securities."
These bequests are not specific.

(*g*) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England.
No one of these legacies is specific.

Bequest of a sum certain where the stocks, &c., in which it is invested are described.

130. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds, or securities in which it is invested are described in the Will.

Illustration.

A bequeaths to B—
"10,000 rupees of his funded property."
"10,000 rupees of his property now invested in Shares of the East Indian Railway Company."
"10,000 rupees at present secured by mortgage of Rampore Factory."
No one of these legacies is specific.

Bequest of stock where the testator had at the date of his Will an equal or greater amount of stock of the same kind.

131. Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was at the date of his Will possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had at the date of the Will five per cent. Government securities for 5,000 rupees.
The legacy is not specific.

Bequest of money where it is not to be paid until some part of the testator's property shall have been disposed of in a certain way.

132. A money legacy is not specific merely because the Will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Illustration.

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as A's property in India shall be realized in England.
The legacy is not specific.

133. Where a Will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

When enumerated articles are not to be deemed to be specifically bequeathed.

134. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Retention in form of specific bequest to several persons in succession.

Illustrations.

(*a*) A having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although if B lives for 15 years, C can take nothing under the bequest.

(*b*) A having an annuity during the life of B, bequeaths it to C for his life, and after C's death to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

135. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall in the absence of any direction to the contrary be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the Will.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

Illustration.

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's death to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

Where there is a deficiency of assets to pay legacies, specific legacy not liable to abate with general legacies.

PART XX.

Of Demonstrative Legacies.

137. Where a testator bequeaths a certain sum of money or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Demonstrative legacy defined.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that where specified property is given to the legatee, the legacy is specific; where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(*a*) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(*b*) A bequeaths to B ten bushels of the corn which shall grow in his field of "Greennere."

"80 chests of the Indigo which shall be made at his factory of Rampore."

"10,000 rupees out of his five per cent. promissory notes of the Government of India."

An annuity of 500 rupees "from his funded property."

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluk of Rámnagar.

A bequeaths to B "10,000 rupees out of his estate at Rámnagar," or charges it on his estate at Rámnagar.

"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

138. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and so far as the residue shall be deficient, out of the general assets of the testator.

Order of payment when legacy is directed to be paid out of a fund the subject of a specific legacy.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

PART XXI.

Of Ademption of Legacies.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the Will.

Ademption explained.

Illustrations.

(*a*) A bequeaths to B—

"The diamond ring presented to him by C."

"His gold chain."

"A certain bale of wool."

"A certain piece of cloth."

"All his household goods which shall be in or about his dwelling-house in M Street in Calcutta at the time of his death."

A, in his lifetime,

Sells or gives away the ring.

Converts the chain into a cup.

Converts the wool into cloth.

Makes the cloth into a garment.

Takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(*b*) A bequeaths to B—

"The sum of 1,000 rupees in a certain chest."

"All the horses in his stable."

At the death of A, no money is found in the chest, and no horses in the stable.

The legacies are adeemed.

(*c*) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned.

The legacy is adeemed.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the Will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

Non-ademption of demonstrative legacy.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Ademption of specific bequest of right to receive something from a third party.

Illustrations.

(*a*) A bequeaths to B—
"The debt which C owes him."
"2,000 rupees which he has in the hands of D"
"The money due to him on the bond of E."
"His mortgage on the Rampore Factory."
All these debts are extinguished in A's lifetime, some with and some without his consent.

All the legacies are adeemed.

(*b*) A bequeaths to B—
"His interest in certain policies of life assurance."
A in his lifetime receives the amount of the policies. The legacy is adeemed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Ademption *pro tanto* by testator's receipt of portion of an entire fund of which a portion has been specifically bequeathed.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund; and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Order of payment where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund to another, and the testator having received a portion of that fund, the remainder is insufficient to pay both legacies.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

145. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

Illustration.

A bequeaths to B—
"His capital stock of 1,000*l.* in East India Stock."
"His promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan."
A sells the stock and the notes.
The legacies are adeemed.

146. Where stock which has been specifically bequeathed, does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

Illustration.

A bequeaths to B—
"His 10,000 rupees in the 5½ per cent. loan of the Government of India."

A sells one-half of his 10,000 rupees in the loan in question.
One-half of the legacy is adeemed.

147. A specific bequest of goods under a description connecting them with a certain place, is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Non-ademption of specific bequest of goods described as connected with a certain place by reason of removal.

Illustrations.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

148. The removal of the thing bequeathed from the place in which it is stated in the Will to be situated, does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

When removal of thing bequeathed does not constitute ademption.

Illustrations.

A bequeaths to B all the bills, bonds, and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the River Hooghly. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When the thing bequeathed is a valuable to be received by the testator from a third person; and the testator himself, or his representative, receives it.

149. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

Change by operation of law of subject of specific bequest between date of Will and testator's death.

150. Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India."

The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

A bequeaths to B the sum of 2,000*l.*, invested in Consols in the names of trustees for A.

The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power, under his marriage settlement, to dispose of by Will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

Change of subject without testator's knowledge.

151. Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B "all his three per cent. Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to a third party on condition that it shall be re-placed.

152. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be re-placed, and it is re-placed accordingly, the legacy is not adeemed.

Stock specifically bequeathed, sold but re-placed and belonging to the testator at his death.

153. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

PART XXII.

Of the Payment of Liabilities in respect of the Subject of a Bequest.

Non-liability of executor to exonerate specific legatees.

154. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien, or incumbrance, created by the testator himself or by any person under whom he claims; then, unless a contrary intention appears by the Will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance. A contrary intention shall not be inferred from any direction which the Will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this Section.

Illustrations.

(*a*) A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(*b*) A bequeaths to B a zamíndárí, which at A's death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where any thing is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(*a*) A having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(*b*) A having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

Exoneration of legatee's immoveable property for which land-revenue or rent is payable periodically.

156. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

Exoneration of specific legatee's stock in a Joint Stock Company.

157. In the absence of any direction in the Will, where there is a specific bequest of stock in a Joint Stock Company, if any call or other payment is due from the testator at the time of his death in respect of such

stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate; but if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(*a*) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(*b*) A has agreed to take 50 shares in an intended Joint Stock Company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(*c*) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(*d*) A bequeaths to B his shares in a Joint Stock Company. B accepts the bequest. Afterwards the affairs of the Company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(*e*) A is the owner of ten shares in a Railway Company. At a meeting held during his lifetime, a call is made of 3*l.* per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.

Of Bequests of Things described in general Terms.

Bequest of thing described in general terms.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations.

(*a*) A bequeaths to C *a* pair of carriage horses, or *a* diamond ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

(*b*) A bequeaths to B "*his* pair of carriage horses." A had no carriage horses at the time of his death. The legacy fails.

PART XXIV.

Of Bequests of the Interest or Produce of a Fund.

Bequest of the interest or produce of a fund.

159. Where the interest or produce of a fund is bequeathed to any person, and the Will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Illustrations.

(*a*) A bequeaths to B the interest of his 5 per cent. promissory notes of the Government of India. There is no other clause in the Will affecting those securities. B is entitled to A's 5 per cent. promissory notes of the Government of India.

(*b*) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death.

(*c*) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.

Of Bequests of Annuities.

Annuity created by Will is payable for life only, unless a contrary intention appears by the Will.

160. Where an annuity is created by Will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the Will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(*a*) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(*b*) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(*c*) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

Period of vesting where Will directs that an annuity be provided out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity.

161. Where the Will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the Will.

Illustrations.

(*a*) A by his Will directs that his executors shall out of his property purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(*b*) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

Abatement of annuity.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the Will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the Will.

Where there is a gift of an annuity, and a residuary gift, the whole of the annuity to be first satisfied.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

PART XXVI.

Of Legacies to Creditors and Portioners.

Creditor *primâ facie* entitled to legacy as well as debt.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the Will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Child *primâ facie* entitled to legacy as well as portion.

165. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his Will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

No ademption by subsequent provision for legatee.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

Illustrations.

(*a*) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(*b*) A bequeaths 40,000 rupees to B, his orphan niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.

Of Election.

Circumstances in which election takes place.

167. Where a man, by his Will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the Will.

Devolution of interest relinquished by the owner.

168. The interest so relinquished shall devolve as if it had not been disposed of by the Will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the Will.

Testator's belief as to his ownership immaterial.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his Will to be his own.

Illustrations.

(*a*) The farm of Sultánpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultánpur, which is worth 900 rupees. C forfeits his legacy of 1,000 rupees, of which 900 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(*b*) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(*c*) A bequeaths to B 1,000 rupees, and to C an estate which will under a settlement belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(*d*) A, a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and subject thereto devises and bequeaths to B "all his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the Will. C may claim his legacy without giving up the real property in England.

Bequest for a man's benefit how regarded for the purpose of election.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Illustration.

The farm of Sultánpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultánpur Buzurg to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the Will or keep his farm of Sultánpur Khurd in opposition to it.

A person deriving a benefit indirectly not put to his election.

171. A person taking no benefit directly under the Will, but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Sultánpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultánpur to B, and 1,000 rupees to C. C dies intestate, shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the Will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultánpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultánpur in opposition to the Will.

A person taking under a Will in his individual capacity, may in another character elect to take in opposition to it.

172. A person who in his individual capacity takes a benefit under the Will, may in another character elect to take in opposition to the Will.

Illustration.

The estate of Sultánpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultánpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultánpur in opposition to the Will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the Will.

Exception to the six last Rules.—Where a particular gift is expressed in the Will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the Will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the Will.

Illustration.

Under A's marriage settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultánpur during her life.

A by his Will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultánpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

When acceptance of a benefit given by a Will constitutes an election to take under the Will.

173. Acceptance of a benefit given by the Will constitutes an election by the legatee to take under the Will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations.

(*a*) A is owner of an estate called Sultánpur Khurd and has a life interest in another estate called Sultánpur Buzurg to which, upon his death, his son B will be absolutely entitled. The Will of A gives the estate of Sultánpur Khurd to B, and the estate of Sultánpur Buzurg to C. B, in ignorance of his own right to the estate of Sultánpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultánpur Khurd. B has not confirmed the bequest of Sultánpur Buzurg to C.

(*b*) B, the eldest son of A, is the possessor of an estate called Sultánpur. A bequeaths Sultánpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultánpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultánpur to C.

Presumption arising from enjoyment by legatee for two years.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the Will without doing any act to express dissent.

Confirmation of bequest by act of legatee.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

When testator's representatives may call upon legatee to elect.

Effect of non-compliance with their request within a reasonable time.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the Will, the representatives shall, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the Will.

Postponement of election in case of disability.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

PART XXVIII.

Of Gifts in Contemplation of Death.

Property transferable by gift made in contemplation of death.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by Will. A gift is said to be made in contemplation of death where a man who is ill and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness. Such a gift may be resumed by the giver. It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

When a gift is said to be made in contemplation of death.

Such gift resumable.

When it fails.

Illustrations.

(*a*) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

A watch.
A bond granted by C to A.
A Bank Note.
A promissory note of the Government of India endorsed in blank.
A Bill of Exchange endorsed in blank.
Certain mortgage deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—
The watch.
The debt secured by C's bond.
The Bank Note.
The promissory note of the Government of India.
The Bill of Exchange.
The money secured by the mortgage deed.

(*b*) A being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(*c*) A being ill and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.

Of Grant of Probate and Letters of Administration.

Character and property of executor or administrator as such.

179. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Administration with copy annexed of authenticated copy of Will proved abroad.

180. When a Will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate to be granted to executor appointed by Will.

181. Probate can be granted only to an executor appointed by the Will.

Appointment express or implied.

182. The appointment may be express or by necessary implication.

Illustrations.

(*a*) A wills that C be his executor if B will not; B is appointed executor by implication.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c*) A appoints several persons executors of his Will and Codicils, and his nephew residuary legatee, and in another Codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my Will and Codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Grant of probate to several executors simultaneously or at different times.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's Will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

Separate probate of Codicil discovered after grant of probate.

185. If a Codicil be discovered after the grant of probate, a separate probate of that Codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the Will.

Procedure when different executors are appointed by the Codicil.

If different executors are appointed by the Codicil, the probate of the Will must be revoked, and a new probate granted of the Will and the Codicil together.

Accrual of representation to surviving executor.

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

No right as executor or legatee can be established, unless probate or letters of administration shall have been granted by a competent Court.

187. No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the Province shall have granted probate of the Will under which the right is claimed, or shall have granted letters of administration under the one hundred and eightieth Section.

Probate establishes the Will from testator's death.

188. Probate of a Will when granted establishes the Will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Persons to whom letters of administration may not be granted.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

No right to intestate's property can be established, unless administration previously granted by a competent Court.

190. No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

From what period letters of administration entitle administrator to intestate's rights.

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts of administrator not validated by letters of administration.

192. Letters of administration do not render valid any intermediate acts of the administrator, tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship; except that

Exception.

when one or more of several executors have proved a Will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the Will appointing him executor.

Procedure where executor renounces or fails to accept within the time limited.

195. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the Will may be proved and letters of administration, with a copy of the Will annexed, may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

196. When the deceased has made a Will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the Will, or when the executor dies after having proved the Will but before he has administered all the estate of the deceased; an universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

197. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the Will annexed as such residuary legatee.

Grant of administration when there is no executor, nor residuary legatee, nor representative of such legatee.

198. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly.

Citation to be issued before grant of administration to any legatee other than universal or residuary.

199. Letters of administration with the Will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next of kin to accept or refuse letters of administration.

Order in which connections by marriage or consanguinity are entitled to administration.

200. When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

Administration to be granted to widow unless Court see cause to exclude her.

201. If the deceased has left a widow, administration shall be granted to the widow unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations.

(*a*) The widow is a lunatic, or has committed adultery, or has been barred by her marriage settlement of all interest in her husband's estate; there is cause for excluding her from the administration.

(*b*) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

Persons associated with widow in administration.

202. If the Judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow.

Grant of administration where no widow, or widow excluded.

203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate; provided that

Proviso.

when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Deceased's kindred of equal degree, equally entitled to administration.

204. Those who stand in equal degree of kindred to the deceased, are equally entitled to administration.

Right of widower to administration of wife's estate.

205. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

Grant of administration to a creditor.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration and willing to act, they may be granted to a creditor.

Where deceased has left property in British India, administration must be granted according to the foregoing rules.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

PART XXX.

Of Limited Grants.

(*a*). *Grants limited in Duration.*

Probate of copy or draft of lost Will.

208. When the Will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the Will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed Will.

209. When the Will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

210. When the Will is in the possession of a person residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the Will or an authenticated copy of it be produced.

Administration until the Will be produced.

211. Where no Will of the deceased is forthcoming, but there is reason to believe that there is a Will in existence, letters of administration may be granted, limited until the Will, or an authenticated copy of it, be produced.

(*b*). *Grants for the Use and Benefit of Others having Right.*

Administration, with the Will annexed, to Attorney of an absent executor.

212. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration, with the Will annexed, may be granted to the Attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

213. When any person to whom, if present, letters of administration, with the Will annexed, might be granted, is absent from the Province, letters of administration, with the Will annexed, may be granted to his Attorney, limited as above mentioned.

Administration, with the Will annexed to Attorney of an absent person, who, if present, would be entitled to administer.

214. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the Attorney of the absent person, limited as before mentioned.

Administration to Attorney of absent person entitled to administer in case of intestacy.

215. When a minor is sole executor or sole residuary legatee, letters of administration, with the Will annexed, may be granted to the legal guardian of such minor or to such other person as the Court shall think fit until the minor shall have completed the age of eighteen years, at which period and not before probate of the Will shall be granted to him.

Administration during minority.

216. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Administration until one of several minor executors or residuary legatees attains majority.

217. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the Will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or if there be no such person to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

Administration for use and benefit of lunatic *jus habens.*

218. Pending any suit touching the validity of the Will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

Administration *pendente lite.*

(c). For Special Purposes.

219. If an executor be appointed for any limited purpose specified in the Will, the probate shall be limited to that purpose, and if he should appoint an Attorney to take administration on his behalf, the letters of administration with the Will annexed shall accordingly be limited.

Probate limited to purpose specified in the Will.

220. If an executor appointed generally give an authority to an Attorney to prove a Will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the Will annexed shall be limited accordingly.

Administration with the Will annexed limited to a particular purpose.

221. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Administration limited to property in which a person has a beneficial interest.

222. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to a suit.

223. If at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to the purpose of becoming a party to a suit to be brought against administrator.

224. In any case in which it may appear necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate, may grant to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Administration limited to collection and preservation of deceased's property.

225. When a person has died intestate, or leaving a Will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the Province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who under ordinary circumstances would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator, and in every such case letters of administration may be limited or not as the Judge shall think fit.

Appointment as administrator of person other than the one who under ordinary circumstances would be entitled to administration.

(d) Grants with Exception.

Probate or administration with the Will annexed, subject to exception.

226. Whenever the nature of the case requires that an exception be made, probate of a Will, or letters of administration with the Will annexed, shall be granted subject to such exception.

Administration with exception.

227. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e) Grants of the Rest.

Probate or administration of the rest.

228. Whenever a grant, with exception, of probate or letters of administration, with or without the Will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f) Grants of Effects unadministered.

Grant of effects unadministered.

229. If the executor to whom probate has been granted have died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

230. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when a limited grant has expired, and there is still some part of the estate unadministered.

231. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

(g) Alteration in Grants.

What errors may be rectified by the Court.

232. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where Codicil discovered after grant of administration with Will annexed.

233. If, after the grant of letters of administration with the Will annexed, a Codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

(h) Revocation of Grants.

Revocation or annulment for just cause, of grant of probate or administration.

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—Just cause is, 1st, that the proceedings to obtain the grant were defective in substance; 2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; 3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; 4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

(*a*) The Court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The Will of which probate was obtained was forged or revoked.

(*d*) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B as if he had died intestate, but a Will has since been discovered.

(*f*) Since probate was granted, a later Will has been discovered.

(*g*) Since probate was granted, a Codicil has been discovered, which revokes or adds to the appointment of executors under the Will.

(*h*) The person to whom probate was or letters of administration were granted has subsequently become of unsound mind.

PART XXXI.

Of the Practice in granting and revoking Probates and Letters of Administration.

Jurisdiction of District Judge in granting and revoking probates and letters of administration.

235. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his District.

District Judge's powers as to the granting of probate and administration.

236. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any Civil suit or proceeding depending in his Court.

District Judge may order any person to produce testamentary papers.

237. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same, and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to

in case he had been a party to a suit, and had made such default, and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated so far as the circumstances of the case will admit by the Code of Civil Procedure.

When and how District Judge is to interfere for the protection of property.

239. Until probate be granted of the Will of a deceased person, or an administrator of his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to interfere for the protection of such property, at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

Probate or administration may be granted by District Judge, when testator or intestate at his death had a fixed dwelling or any property within the jurisdiction.

240. Probate of the Will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

When application is made to the Judge of a District in which the deceased had no fixed abode.

241. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another District, or where the application is for letters of administration, to grant them absolutely or limited to the property within his own jurisdiction.

Conclusiveness of probate or letters of administration.

242. Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

Conclusiveness of application for probate or administration, if properly made and verified.

243. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached, by reason that the testator or intestate had no fixed place of abode, or no property within the District at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the Will annexed, and stating the time of the testator's death, that the writing annexed is his last Will and testament, that it was duly executed, and that the petitioner is the executor therein named; and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge.

In what cases translation of Will to be annexed to the petition.

245. In cases wherein the Will is written in any language other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or if the Will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—"I (A B) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Verification of translation made by any person other than the Court translator.

Petition for letters of administration.

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating the time and place of the deceased's death, the family or other relatives of the deceased, and their respective residences, the right in which the petitioner claims, that the deceased left some property within the jurisdiction of the District Judge to whom the application is made, and the amount of assets which are likely to come to the petitioner's hands.

Petition for probate or letters of administration to be signed and verified.

247. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A B*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one of the witnesses to the Will.

248. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the Will (when procurable), in the manner or to the effect following:—

"I (*C D*), one of the witnesses to the last Will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*), (*or* that the said tes-

tator acknowledged the writing annexed to the above petition to be his last Will and testament in my presence").

Punishment for making false averment in petition or declaration.

249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person and require further evidence, and issue citations to inspect the proceedings.

250. In all cases it shall be lawful for the District Judge, if he shall think proper, to examine the petitioner in person, upon oath or solemn affirmation, and also to require further evidence of the due execution of the Will, or the right of the petitioner to the letters of administration, as the case may be, and to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge issuing the same may direct.

Publication of citation.

Caveat against grant of probate or administration.

251. Caveats against the grant of probate or administration may be lodged with the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to any other Judge to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

252. The caveat shall be to the following effect:—"Let nothing be done in the matter of the estate of A B, late of , deceased, who died on the day of at , without notice to C D of ."

After entry of caveat, no proceeding to be taken on the petition until after notice to the caveator.

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge to whom the application has been made, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

Grant of probate to be under seal of the Court.

254. When it shall appear to the Judge that probate of a Will should be granted, he will grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, Judge of the District of hereby make known that on the day of in the year the last Will of late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his Will, was granted to the executor in the said Will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a true account thereof."

Grant of letters of administration to be under seal of Court.

255. And wherever it shall appear to the District Judge that letters of administration to the estate of a person deceased, with or without a copy of the Will annexed, should be granted, he will grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of , hereby make known that on the day of letters of administration (with *or* without the Will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father *(or as the case may be)* of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a true account thereof."

Administration Bond.

256. Every person to whom any grant of administration shall be committed shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct.

Assignment of administration-bond.

257. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Probate not to be granted until after seven days, and letters of administration until after fourteen days, from the testator's or intestate's death.

258. No probate of a Will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days from the day of the testator or intestate's death.

Filing of original Wills of which probate or letters of administration with Will annexed have been granted.

259. Every District Judge shall file and preserve all original Wills of which probate or letters of administration with the Will annexed may be granted by him among the records of his Court, until some public registry for Wills is established; and the Local Government shall make regulations for the pre-

servation and inspection of the Wills so filed as aforesaid.

Grantee of probate or letters of administration shall alone have power to sue, &c., until the same shall have been revoked.

260. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

261. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or letters of administration revoked.

262. Where any probate is or letters of administration are revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Right of such executor or administrator to recoup himself for payments.

Appeals from orders made by District Judge under powers conferred by this Act.

263. Every order made by a District Judge by virtue of the powers hereby conferred upon him, shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent Jurisdiction of High Court.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

PART XXXII.

Of Executors of their own Wrong.

Executor of his own wrong.

265. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Exceptions. First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another, does not make an executor of his own wrong.

Illustrations.

(*a*) A uses or gives away or sells some of the goods of the deceased or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(*b*) A having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(*c*) A sues as executor of the deceased not being such. He is an executor of his own wrong.

Liability of an executor of his own wrong.

266. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.

Of the Powers of an Executor or Administrator.

In respect of causes of action surviving the deceased, and rents due at the time of his death.

267. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

Demands and rights of action in favour of or against deceased, survive to and against his executor or administrator.

268. All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustrations.

(*a*) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(*b*) A sues for divorce. A dies. The cause of action does not survive to his representative.

Power of executor or administrator to dispose of deceased's property.

269. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Illustrations.

(*a*) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(*b*) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

270. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property.

271. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the Will or taken out administration.

Powers of several executors or administrators, exercisable by one.

Illustrations.

(*a*) One of the several executors has power to release a debt due to the deceased.

(*b*) One has power to surrender a lease.

(*c*) One has power to sell the property of the deceased, moveable or immoveable.

(*d*) One has power to assent to a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The Will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

272. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

273. The administrator of effects unadministered has, with respect to such effects, the same power as the original executor or administrator.

Powers of administrator of effects unadministered.

274. An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

PART XXXIV.

Of the Duties of an Executor or Administrator.

276. It is the duty of the executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral.

277. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same may have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that may have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Duty of executor or administrator as to property of, and debts owing to, the deceased.

279. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan, or domestic servant are next to be paid, and then the other debts of the deceased.

Wages for certain services to be next paid, and then the other debts.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account. But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assests of the deceased will extend.

Save as aforesaid, all debts to be paid equally and rateably.

283. If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled.

Application of moveable property to payment of debts, where the deceased's domicile was not in British India.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 10,000 rupees, immoveable property to the value of 5,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The debts on the instruments under seal are to be paid in full out of the moveable estate, and the proceeds of the immoveable estate are to be applied as far as they will extend towards the discharge of the debts not under seal. Accordingly, one-half of the amount of the debts not under seal is to be paid out of the proceeds of the immoveable estate.

284. No creditor who has received payment of a part of his debt by virtue of the last preceding Section shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Creditor paid in part under Section 283 to bring such payment into account before sharing in proceeds of immoveable property.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount.

The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed ratably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

285. Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

286. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

287. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

Non-abatement of specific legacy when assets sufficient to pay debts.

288. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Right under demonstrative legacy, when the assets are sufficient to pay debts and necessary expenses.

289. Where there is a demonstrative legacy and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Rateable abatement of specific legacies.

290. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

Legacies treated as general for purpose of abatement.

291. For the purpose of abatement, a legacy for life, a sum appropriated by the Will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

PART XXXV.

Of the Executor's Assent to a Legacy.

Executor's assent necessary to complete legatee's title.

292. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(*a*) A by his Will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*) A by his Will has bequeathed to C his house in Calcutta in the tenancy of D. C is not entitled to receive the rents without the assent of the executor.

Effect of executor's assent to specific legacy.

Assent may be verbal, and either express or implied.

293. The assent of the executor to a specific bequest shall be sufficient to devest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way. This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*) The interest of a fund is directed by the Will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

294. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(*a*) A bequeaths to B his lands of Sultánpur, which at the date of the Will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

Implied assent.

295. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied. Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Assent of executor gives effect to legacy from testator's death.

296. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(*a*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor not bound to pay or deliver legacies until after one year from testator's death.

297. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

PART XXXVI.

Of the Payment and Apportionment of Annuities.

Commencement of annuity when no time fixed by Will.

298. Where an annuity is given by the Will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When payment of annuity to be paid quarterly or monthly first falls due.

299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

Dates of successive payments when first payment of an annuity directed to be made within a given time, or on a day certain.

300. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the Will authorizes the first payment to be made; and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

PART XXXVII.

Of the Investment of Funds to provide for Legacies.

Investment of sum bequeathed where a legacy, not specific, is given for life.

301. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of amount of general legacy to be paid at a future time.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding Section. The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

Procedure when no fund is charged with or appropriated to an annuity.

303. Where an annuity is given and no fund is charged with its payment or appropriated by the Will to answer it, a Government annuity of the specified amount shall be purchased, or, if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

Transfer to residuary legatee of amount of contingent bequest.

304. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed to a person for life, without direction to invest in particular securities.

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities, shall be converted into money and invested in such securities.

Investment of residue bequeathed to a person for life, with direction to invest in specified securities.

306. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and manner of the conversion and investment.

307. Such conversion and investment as are contemplated by the two last preceding Sections shall be made at such times and in such manner as the executor shall in his discretion think fit; and until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

Procedure where minor is entitled to immediate payment or possession of bequest, and there is no direction to pay to any person on his behalf.

308. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the Will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom the probate was or letters of administration with the Will annexed were granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and if the legatee be a ward of the Court of Wards the legacy shall be paid into that Court to his account, and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money

so paid; and such money when paid in shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

PART XXXVIII.

Of the Produce and Interest of Legacies.

Legatee of a specific legacy entitled to produce thereof from testator's death.

309. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee entitled to produce of residuary fund from testator's death.

310. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time is fixed for payment of a general legacy.

311. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions. (1.)—Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.)—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.)—Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time has been fixed.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the Will for maintenance.

Rate of interest.

313. The rate of interest shall be four per cent. per annum.

No interest payable on arrears of annuity within first year after testator's death.

314. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the Will for making the first payment of the annuity.

Interest payable on sum to be invested to produce annuity.

315. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

PART XXXIX.

Of the Refunding of Legacies.

Refund of legacy paid under Judge's orders.

316. When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund if legacy paid voluntarily.

317. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

Refund when legacy has become due on performance of a condition within further time allowed under Section 124.

318. When the time prescribed by the Will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under the one hundred and twenty-fourth Section, for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

When each legatee is compellable to refund in proportion.

319. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

320. Where an executor or administrator has given such notices as would have been given by the High Court in an administration suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution; but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

Within what period a creditor may call upon a legatee to refund.

321. A creditor who has not received payment of his debt may, within two years after the death of the testator or one year after the legacy has been paid, call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor was voluntary or not.

When a legatee who has not received payment or who has been compelled to refund under Section 321, cannot oblige one who has received payment in full to refund.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding Section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When an unsatisfied legatee must first proceed against executor, if solvent.

323. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to the refunding of one legatee to another.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

325. The refunding shall in all cases be without interest.

Residue of the deceased's property after usual payments to be paid to residuary legatee.

326. The surplus or residue of the deceased's property after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the Will.

PART XL.

Of the Liability of an Executor or Administrator for Devastation.

Liability of executor or administrator for devastation.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

For neglect to get in any part of the deceased's property.

328. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.

Miscellaneous.

Stamps and fees on instruments mentioned in this Act.

329. For every instrument or writing of any of the kinds specified in the Schedule to this Act, and which shall be made or executed after the commencement of this Act, there shall be payable to Government a Stamp duty or fee of the amount indicated in the said Schedule.

Saving of rights, duties, and privileges of Administrator General.

330. Nothing contained in this Act shall be deemed or taken to supersede or affect the rights, duties, and privileges of the Administrators General and Officiating Administrators General of Bengal, Madras and Bombay respectively, under or by virtue of Act VIII of 1855 (*to amend the law relating to the office and duties of Administrator General*), Act XXVI of 1860 (*to amend Act VIII of* 1855), The Regimental Debts Act, 1863, and the Administrator General's Act, 1865; and it shall be the duty of the Magistrate or other Chief Officer charged with the executive administration of a district or place in criminal matters, whenever any person to whom the provisions of this Act shall apply shall die within the

limits of his jurisdiction, to report the circumstances without delay to the Administrator General of the Province, retaining the property under his charge until letters of administration shall have been obtained by that Officer or by some other person, when the property is to be delivered over to the person obtaining such letters, or who may obtain probate of the Will (if any) of the deceased.

Succession to property of Hindús, Muhammadans or Buddhists, and certain Wills, intestacies and marriages, not affected by this Act.

331. The provisions of this Act shall not apply to Intestate or Testamentary succession to the property of any Hindú, Muhammadan or Buddhist; nor shall they apply to any Will made, or any intestacy occurring before the first day of January 1866. The fourth Section shall not apply to any marriage contracted before the same day.

Power of Governor General to exempt any race, sect, or tribe in British India from the operation of this Act.

332. The Governor-General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect or tribe in British India or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order. The Governor-General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect. All orders and revocations made under this Section shall be published in the *Gazette of India*.

SCHEDULE.

STAMPS.

		Stamps.		
Petition for probate or letters of administration where the value of the estate exceeds Rs. 500 ...	Rs.	10	0	0
Ditto where the value of the estate is less than Rs. 500 ...	Re.	1	0	0
Probate or letters of administration	Rs.	8	0	0
Caveat ...	Rs.	4	0	0
Citation ...	Re.	1	0	0
All petitions other than those above mentioned	Re.	1	0	0
Inventory ...	Re.	1	0	0
Administration-bond	Rs.	8	0	0

FEE.

Translations by the Court Translator or by order of the Court, per folio of ninety words ...	Rs.	2	0	0

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (*Legislative.*)

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor-General on the 15th March 1865, and is hereby promulgated for general information:—

ACT No. XI OF 1865.

An Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature.

Preamble.

Whereas it is expedient to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature; It is enacted as follows:—

1. In this Act, unless there be something repugnant in the subject or context—

Number.

Words importing the singular number include the plural, and words importing the plural number include the singular.

Gender.

Words importing the masculine gender include females.

"Judge."

"Judge" includes an Acting Judge.

"Section."

"Section" means a Section of this Act.

"Court of Small Causes."

"Court of Small Causes" means a Court constituted under this Act.

"Local Government."

And, in every part of British India in which this Act operates, "Local Government" denotes the person authorized to administer the Executive Government in such part, and "High Court" denotes

"High Court."

the highest Civil Court of Appeal having jurisdiction therein.

Repeal of Acts XLII of 1860 and XII of 1861.

2. Act XLII of 1860 *(for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)*, and Act XII of 1861 *(to amend Act XLII of 1860)* are hereby repealed: Provided that any Courts of Small Causes now in existence which shall have been constituted under Act No. XLII of 1860, shall be considered as constituted under this Act within the territorial limits of the jurisdiction assigned to such Courts under the said Act XLII of 1860 or which may hereafter be assigned to them under the next following Section, and shall be subject to all the provisions contained herein; and all suits and proceedings pending in any such Courts shall be heard and determined in the same manner as suits and proceedings are required to be heard and determined under this Act; but this Act shall not in any way invalidate or alter the effect of anything which shall have been done in any such suit or proceeding prior to the commencement of this Act.

Constitution of Small Cause Courts.

3. The Local Government may, with the previous sanction of the Governor-General of India in Council, constitute for the trial of suits under this Act, Courts of Small Causes with such establishment of Officers as may be necessary, at any

places within the Territories under such Government. Whenever a Court of Small Causes shall be so constituted, the Local Government shall fix the territorial limits of the jurisdiction of such Court, and may from time to time alter the limits so fixed. The Local Government may abolish any Court of Small Causes.

Limits of their territorial jurisdiction to be fixed by Local Government.

4. Every Court of Small Causes shall use a seal bearing the following inscription in English and in the language of the Court—"Court of Small Causes of ,"—and shall be subject to the general control and orders of the High Court.

Seal of the Court.

Courts to be generally subject to the High Court.

5. Courts of Small Causes shall be held at such place or places within the local limits of their respective jurisdictions, as shall from time to time be appointed by the Local Government.

Places where Courts to be held.

6. The following are the suits which shall be cognizable by Courts of Small Causes, namely, claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of five hundred Rupees whether on balance of account or otherwise: Provided that no action shall lie in any such Court

Suits cognizable by Small Cause Courts.

Proviso.

(1). On a balance of partnership account, unless the balance shall have been struck by the parties or their agents:

(2). For a share or part of a share under an intestacy, or for a legacy or part of a legacy under a Will:

(3). For the recovery of damages on account of an alleged personal injury, unless actual pecuniary damage shall have resulted from the injury:

(4). For any claim for the rent of land or other claim for which a suit may now be brought before a Revenue Officer, unless, as regards arrears of rent for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the Local Government with jurisdiction over claims to such arrears.

7. The Local Government may extend the jurisdiction of any Court of Small Causes, in suits of the nature described in the last preceding Section and thereby made cognizable by Courts of Small Causes, to an amount not exceeding one thousand Rupees.

Power to extend jurisdiction of Small Cause Courts to Rupees 1,000.

8. Courts of Small Causes may try all such suits as are described in the sixth Section and thereby made cognizable by Courts of Small Causes, if the defendant at the time of the commencement of the suit shall dwell, or personally work for gain or carry on business, within the local limits of the jurisdiction of such Court; or if the cause of action arose within the said local limits, and the defendant, at the time of the commencement of the suit, shall by his servant or agent carry on business or work for gain within those limits.

Jurisdiction of the Courts.

Explanations.—(*a.*) Where a person has a permanent dwelling at one place, and also a lodging at another place for a temporary purpose only, he shall be deemed to dwell at both places in respect of any cause of action arising at the place where he has such temporary lodging.

(*b.*) A Corporation or Company shall be deemed to carry on business at its sole or principal office, or at any place where it has also a subordinate office, in respect of any cause of action arising at such place.

(*c.*) The 'business' contemplated in this Section must be carried on at some fixed place for at least a certain time.

9. Suits against the Local Government or against the Government of India shall be brought in the Court having jurisdiction at the place which is the seat of such Government.

Suits against Government.

10. Suits against the Secretary of State shall be brought in the Court having jurisdiction at the place which is the seat of the Local Government for the Territories in which the cause of action arose.

Suits against the Secretary of State.

11. Service of a summons issued under this Act, on any servant or agent by whom the defendant may carry on business or work for gain, shall be deemed to be good service upon the defendant, provided that such agent or servant himself, at the time of such service, personally carries on the business or work for gain for the defendant, within the local limits of the jurisdiction of the Court in which the suit is brought.

Substituted service of summons.

12. Wherever a Court of Small Causes is constituted under this Act, no suit cognizable by such Court shall be heard or determined in any other Court having jurisdiction within the local limits of the jurisdiction of such Court of Small Causes: Provided that nothing in this Act shall be held to take away the jurisdiction which a Magistrate, or a person exercising the powers of a Magistrate, or an Assistant or Deputy Magistrate, can now exercise in regard to debts or other claims of a Civil nature; or the jurisdiction which can be exercised by Village Moonsiffs, or Village or District Panchâyats, under the provisions of the Madras Code; or by Military Courts of Requests, or by Cantonment Joint Magistrates invested with Civil jurisdiction under Act III of 1859 *(for conferring Civil Jurisdiction in certain cases upon Cantonment Joint Magistrates and for constituting those Officers Registers of Deeds)*; or by a single Officer duly authorized and appointed under the Rules in force in the Presidencies of Madras and Bombay respectively, for the trial of small suits in Military Bazaars, in Cantonments, and Stations occupied by the troops of those Presidencies respectively; or by Panchâyats in regard to suits against Military persons, according to the Rules in force in the Presidency of Madras.

Suits cognizable by a Court of Small Causes, not to be heard by any other Court having jurisdiction within the local limits.

Saving of jurisdiction of Magistrates as to debts.

Of Village Moonsiffs and Village or District Panchâyats in Madras.

Of Military Courts of Requests.

Of Officers appointed to try small suits in Madras and Bombay.

Or of Military Panchayâts in Madras.

Judge of Court.

13. Every Court of Small Causes shall (except as hereinafter provided) be held before a Judge appointed by the Local Government, and who shall receive such salary as the Governor General of India in Council may from time to time determine. Such Judge shall be the Judge either of one such Court or of two or more such Courts as the Local Government shall appoint, but except as hereinafter provided, he shall not exercise any Civil jurisdiction except under the provisions of this Act.

Power to Judge of several Courts to fix times and dates of circuits and sittings.

14. It shall be lawful for any Judge who is the Judge of two or more Courts of Small Causes to fix, subject to the orders of the Local Government, or, in Territories under the immediate administration of the Government of India, of the Chief Commissioner or other principal Civil Authority, the times at which he will go on Circuit, and the dates on which his sittings in the several Courts of which he is Judge shall commence. Notice of such times and dates shall be published in the Official Gazette and at such places and in such manner as the Local Government or Chief Commissioner or other Authority as aforesaid shall think fit to direct in that behalf.

Local Government may invest any person for a limited period with powers of Judge of Court of Small Causes.

15. The Local Government may from time to time invest any person with the powers of a Judge of a Court of Small Causes under this Act for a limited period or for specific periods in each year only, and declare in what Court or Courts of Small Causes such powers shall be exercised by such person. Any person so invested shall, in all Courts in which the Local Government shall have declared that he shall exercise the said powers, have all such powers as might in such Courts be exercised by a Judge of the said Courts appointed under the thirteenth Section.

Powers to be exercised by persons so invested.

Jurisdiction to be exercised by persons so invested in Court in which there is a Judge.

16. If it shall be declared by the Local Government that any person invested under the last preceding Section with the powers of a Judge of a Court of Small Causes, shall exercise those powers in a Court of which there is a Judge appointed under the thirteenth Section, the person so invested shall exercise a jurisdiction concurrent with that of such Judge. The Local Government shall from time to time make Rules to provide for the distribution of business between any person so invested and any Judge in whose Court it may be declared that such person shall exercise his powers, and generally for regulating and defining the duties and relative positions of Judges of Courts of Small Causes and persons so invested as aforesaid: Provided always that no such Rule shall be in any way inconsistent with the provisions of this Act.

Remuneration of Judges and of persons invested with powers of Small Cause Court Judge, and restriction from practising within the limits.

17. Every person invested with the powers of a Judge of a Court of Small Causes under the fifteenth Section shall receive such remuneration as the Governor General in Council shall from time to time determine. It shall not be lawful for any such person to practise as a Barrister, Attorney, Vakeel, Pleader, or Law Agent in any district or place within the territorial limits of which he is empowered to exercise the powers with which he is invested.

Summons.

18. In all suits under this Act, the summons to the defendant shall be for the final disposal of the suit, and no written statement other than the plaint shall be received unless required by the Court.

In suits cognizable by Small Cause Courts, Court may on the judgment-creditor's application direct immediate execution against the judgment-debtor's person or movable property.

19. When a decree is passed in any suit of the nature and amount cognizable under this Act, the Court passing the decree may, at the same time that it passes the decree, on the verbal application of the party in whose favor the decree is given, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court passing the decree, or against the movable property of the judgment-debtor within the same limits. If the warrant be directed against the movable property of the judgment-debtor, it may be general against any personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the Court, or special against any personal property belonging to the judgment-debtor within the same limits, and which shall be indicated by the judgment-creditor.

Execution against immovable property, if movable property not sufficient.

20. In the execution of a decree under this Act, if, after the sale of the movable property of a judgment-debtor, any portion of a judgment-debt shall remain due, and the holder of the judgment desire to issue execution upon any immovable property belonging to the judgment-debtor, the Court, on the application of the holder of such judgment, shall grant him a copy of the judgment and a certificate of any sum remaining due under it; and on the presentation of such copy and certificate to any Court of Civil Judicature having general jurisdiction in the place in which the immovable property of the judgment-debtor is situate, such Court shall proceed to enforce such judgment according to its own rules and mode of procedure in like cases.

Decision in suits tried under this Act to be final.

21. In suits tried under this Act, all decisions and orders of the Court shall be final: Provided that in any case in which a decree shall be passed *ex parte* against a defendant, he may within thirty days after any process for enforcing the decree has been executed give notice to the Court by which the decree was passed, of his intention to apply to the Court at its next sitting for an order to set it aside: and if, on the application being made to the Court at its next sitting, it shall be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was heard, the Court shall pass an order, setting aside the decree and shall appoint a day for proceeding with the suit, upon such terms as to costs or otherwise as shall to the Court seem proper:

Ex parte decree may be set aside.

New trial.

Provided also that it shall be competent to the Court, if it

shall think fit, in any case not falling within the proviso last aforesaid, to grant a new trial, if notice of the intention to apply for the same at the next sitting of the Court be given to the Court within the period of seven days from the date of the decision, and if the same be applied for at the next sitting of the Court; but no such new trial shall be granted where the party applying for the same is the defendant or one of the defendants, unless he shall with his notice of application deposit in Court the amount for which a decree shall have been passed against him, including the costs (if any) of the opposite party.

On deposit of debt and costs.

22. If in the trial of any suit under this Act any question of law, or usage having the force of law, or any question as to the construction of a document which construction may affect the merits of the decision, shall arise, the Court, in suits for an amount not exceeding five hundred rupees, may, either of its own motion or on the application of any of the parties to the suit, and in suits for an amount greater than five hundred rupees shall, draw up a statement of the case and refer it, with the Court's own opinion, for the decision of the High Court.

Power to refer questions of law, &c., to High Court.

23. The Court may proceed in the case notwithstanding such reference, and may pass a decree contingent upon the opinion of the High Court on the point referred; but no execution shall be issued in any case in which a reference shall have been made, until the receipt of the order of the High Court.

Power to pass decree contingent upon the opinion of the High Court.

24. The High Court shall fix an early day for the hearing of the case, and shall cause notice of such day to be placed in the Court-house.

High Court to fix day for the hearing.

25. The parties to the case may appear and be heard in the High Court in person or by Pleader.

Parties may appear and be heard in person or by Pleader.

26. The High Court when it has heard and considered the case, shall send a copy of its judgment, under the seal of the Court, to the Court by which the reference was made; and such Court shall, on the receipt of the copy, proceed to dispose of the case conformably to the decision of the High Court.

Decision of High Court to be transmitted.

27. Costs, if any, consequent on the reference of a case for the opinion of the High Court, shall be costs in the suit.

Costs of reference to High Court.

28. When a case is referred to the High Court under the twenty-second Section, the High Court may alter, cancel, or set aside any order or decree which the Court stating the case may have made in the suit out of which the reference arose, and may make such order as the justice of the case may require.

Power to High Court to alter or set aside order or decree made in the matter.

29. Whenever more Courts than one are constituted in any District under this Act, the Local Government may appoint one of the same Courts to be the Principal Court of Small Causes in such District.

Power to appoint one of the Courts of a District to be the Principal Court.

30. The Judge of the Principal Court of Small Causes in any District may sit with the Judge of any other Court of Small Causes in the same District, or with a person invested with the powers of a Judge as aforesaid, in such Court, for the trial and determination of any suit cognizable under this Act, and shall so sit for the trial and determination of any such suit which the Judge of such other Court or other person as aforesaid may reserve for trial by himself and the Judge of the Principal Court of Small Causes.

Judge of Principal Court may sit with Judge of any other Court in the District for the trial of reserved suits.

31. The Local Government may from time to time make Rules providing that in such cases as shall be prescribed in such Rules, two Judges or a Judge and a person invested with the powers of a Judge as aforesaid, shall sit together and hear and dispose of suits and applications.

Procedure when two Judges sit together for trial of certain suits.

32. If two Judges, or a Judge and a person invested with the powers of a Judge as aforesaid, sit together and they concur in the decision or order to be passed, such decision or order shall be the decision or order of the Court: but if they shall differ on a point of law, or usage having the force of law, or in construing a document the construction of which may affect the merits of the decision, they shall submit a case for the opinion of the High Court on the point of difference between them, in the manner prescribed in the twenty-second Section of this Act; and the provisions applicable to a reference to the High Court, contained in the twenty-second, twenty-third, twenty-fourth, twenty-fifth and twenty-sixth Sections of this Act shallbe applicable to every reference made under this Section.

Procedure when two Judges differ on a point of law.

33. If two Judges differ on any matter other than the matters above-mentioned, the Judge who is senior in respect of date of appointment as a Judge of a Court of Small Causes shall have the casting voice.

Casting voice in case of difference between two Judges on a question of fact.

34. If a Judge and a person invested with the powers of a Judge as aforesaid differ on any matter other than the matters above mentioned, the Judge shall have the casting voice.

Casting voice in case of difference on a question of fact between a Judge and a person invested with a Judge's powers.

35. It shall be lawful for the Local Government to appoint to any Court of Small Causes an Officer who shall be called the Registrar of the Court, and who shall be paid such salary as shall from time to time be authorized in that behalf by the Governor General of India in Council.

Appointment of Registrar.

Duties of Registrar.

36. The Registrar of every Court of Small Causes shall be the chief Ministerial Officer of the Court. In addition to any other duties and powers herein imposed or conferred upon the Registrar, he shall, subject to the provisions contained in the next following Section, receive all plaints presented to the Court; issue notice of suit to the defendants; receive any documents which the parties may wish to put in; and issue process for the attendance of their witnesses. He shall likewise keep lists of all causes coming on for trial, and fix such days for their being heard respectively, as may seem to him fit. He may also receive notices under the twenty-first Section.

Procedure where Registrar thinks plaint defective in certain particulars.

37. If, when the Judge is absent on duty and there is no person invested with the powers of a Judge as aforesaid, the Registrar shall be of opinion that any plaint presented to the Court is defective in any of the particulars mentioned in Sections twenty-seven to thirty-two both inclusive, of the Code of Civil Procedure, he may reject the same. But it shall be lawful for the Judge or for any person invested with the powers of a Judge as aforesaid to reject any plaint which may have been received by the Registrar, and to receive any plaint which may have been rejected by him: Provided that such reception or rejection (as the case may be) by the Registrar shall, in the opinion of such Judge or other person empowered as aforesaid, have been erroneous, and that an application to set the same aside shall be made at the first subsequent sitting in the said Court of a Judge or other person duly empowered as aforesaid.

Proviso.

Registrar may receive and enter up judgments by confession.

38. If a suit shall have been instituted in a Court of Small Causes, and the defendant shall have been duly summoned to appear and answer therein, and if before the day appointed for the hearing of such suit, the defendant or his agent duly authorized in that behalf shall appear before the Registrar of the Court, and admit the plaintiff's claim and apply for leave to confess judgment, it shall be lawful for the Registrar, if the Judge be absent on duty and there be no person invested with the powers of a Judge as aforesaid, to enter on the record a decree for the plaintiff by confession, and such decree shall have the like force and effect as a decree for the plaintiff would have had if the suit had been heard by the Judge and a decree passed by him for the plaintiff: Provided that in every case, before passing a decree under this Section, it shall be the duty of the Registrar fully to satisfy himself of the service of the summons, of the identity of the parties, and of their good faith in appearing before him.

Proviso.

Execution of decrees by Registrar.

39. The Registrar, if the Judge be absent on duty and there be no person invested with the powers of a Judge as aforesaid, shall also receive applications for the execution of decrees passed by the Judge, or other person empowered as aforesaid, of the Court of which he is the Registrar, and, subject to any orders which he may receive from the Judge or such other person, shall execute such decrees in the same manner as the Judge might execute them. No appeal shall lie from any order passed by the Registrar under this Section; but the Judge or other person empowered as aforesaid may, within three calendar months from the making of the order, of his own motion reverse or modify it.

Power to invest Registrar with jurisdiction of Small Cause Court Judge in certain cases.

40. The local Government may invest any Registrar with the powers of a Judge of a Court of Small Causes in suits arising within the local limits of the jurisdiction of the Court of which he is the Registrar, provided that the amount or value of the claim shall not exceed twenty Rupees. The Registrar shall exercise such powers subject to the general control of the Judge, or, when there is no Judge, of any person invested with the powers of a Judge as aforesaid.

Hearing of suits cognizable by Registrar.

41. The suits cognizable by the Registrar under the last preceding Section shall be set down for hearing before such Registrar, and he shall hear and determine such suits and execute the decrees made therein, in such manner in all respects as the Judge of the Court might hear, determine and execute the same respectively: Provided that the Judge, or, when there is no Judge, the person invested with the powers of a Judge, whenever he thinks proper, may transfer to his own file any suit on the file of the Registrar, and may hear and determine the same.

Transfer from Registrar's to Judge's file.

No appeal from decision of Registrar under last Section; but in cases of doubt, he may submit statement for opinion of Judge.

42. No appeal shall lie from any order or decision made or passed by the Registrar, in any case heard or disposed of by him; but in any case in which the Registrar shall entertain any doubt upon any question of law, or usage having the force of law, or as to the construction of a document which construction may affect the merits of the decision, he shall be at liberty to state a case for the opinion of the Judge, or, when there is no Judge, of the person invested with the powers of a Judge as aforesaid, in like manner as the Judge may, under the twenty-second Section of this Act, state a case for the opinion of the High Court; and all the provisions herein contained, relative to the stating of a case by the Judge, shall apply, *mutatis mutandis*, to the stating of a case by the Registrar.

Provisions applicable to such reference.

Setting aside decree by a Registrar under Section 38.

43. A decree passed by a Registrar under the thirty-eighth Section may be set aside by the Judge of the Court, or, when there is no Judge, by the person invested with the powers of a Judge as aforesaid, in such manner and on such grounds only as it might be set aside if it were a decree passed at the hearing of the cause by the Judge or other person empowered as aforesaid.

Appointment and removal of Clerk of the Court.

44. An Officer to be styled the Clerk of the Court may be appointed to any Court of Small Causes on such salary as shall be authorized by the Governor General of India in Council. The appointment and removal of such Officer shall rest with the Court, subject to the approval of the Local Government, or, in Territories under the immediate administration of the Government of India, of the Chief Commissioner or other principal Civil Authority. The Registrar

of any Court of Small Causes may also be the Clerk of the Court.

Duties of Clerk.

45. When a Clerk is appointed to any Court of Small Causes, such Clerk shall, subject to the orders of the Court and of the Registrar if there be a Registrar, issue all Summonses, Warrants, Orders, and Writs of Execution, and keep an account of all proceedings of the Court, and shall take charge of and keep an account of all monies payable or paid into or out of Court, and shall enter an account of all such monies in a book belonging to the Court to be kept by such Clerk for that purpose.

High Court empowered to make rules of practice, &c.

46. The High Court shall have power to make and issue general rules for regulating the practice and proceedings of Courts of Small Causes, and also to prescribe forms for every proceeding in the said Courts for which it shall think that forms should be provided, and for keeping all books, entries and accounts to be kept by the Officers, and from time to time to alter any such rule or form; provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law for the time being in force.

Provisions of Section 26 of Act X of 1862, and of Act VIII of 1859 made applicable to cases cognizable under this Act.

47. The twenty-sixth Section of Act X of 1862 (*to consolidate and amend the Law relating to Stamp Duties*), and, except as hereinbefore provided, the provisions of the Code of Civil Procedure shall, so far as the same are or may be applicable, extend to all suits and proceedings under this Act.

Saving of Act XI of 1841, Section 17.

48. Nothing in the second Section of the said Act No. III of 1859, or the sixth, seventh and eighth Sections of Act No. XXII of 1864 (*to make provision for the Administration of Military Cantonments*), relating to the establishment of Courts of Small Causes in Military Cantonments, shall be held to affect so much of Act No. XI of 1841 (*for consolidating and amending the Regulations concerning Military Courts of Requests for Native Officers and soldiers in the service of the East India Company*) as declares that in places beyond the frontier of the Territories of the East India Company, actions of debt and other personal actions may be brought before the Military Courts therein mentioned, against persons so amenable as therein mentioned, for any amount of demand.

Saving of jurisdiction of Courts of Requests.

49. Nothing in this Act, nor in the sixth, seventh and eighth Sections of the said Act XXII of 1864, shall be held to affect the jurisdiction of any Court of Requests convened under the hundred and third Section of the Statute 27 Vic., cap. 3, or the corresponding Section in any other Statute for the time being in force, for punishing mutiny and desertion, and for the better payment of the Army and their quarters, or the powers of a Commanding Officer, under any such Statute to assemble such Courts.

Reference in previous Acts to Act XLII of 1860 to be read as applying to this Act.

50. When in any Act passed prior to the coming into operation of this Act reference is made to Act XLII of 1860, such reference shall be read as applying to this Act, and when any procedure is directed to be in accordance with the provisions of Act XLII of 1860, such procedure shall be deemed to be directed to be in accordance with the provisions of this Act.

Power to give a Small Cause Court Judge the powers of a Principal Sudder Ameen or a Magistrate.

51. Whenever the state of business in any Court of Small Causes, the Judge of which shall be the Judge of such Court only, is not sufficient to occupy his time fully, the Local Government may invest him within such limits as it shall from time to time appoint, in addition to his powers as such Judge, with the powers of a Magistrate as defined in the Code of Criminal Procedure, or, in the Regulation Provinces, with the powers of a Principal Sudder Ameen, or, in the Non-Regulation Provinces, with the powers of an Officer exercising the like or nearly the like powers as those of a Principal Sudder Ameen.

Power to give Small Cause Court Judge jurisdiction to hear claims under Act X of 1859.

52. In the places in which the provisions of Act X of 1859 (*to amend the Law relating to the recovery of Rent in the Presidency of Fort William in Bengal*), are in force, the Local Government may empower any Judge of a Court of Small Causes to hear and determine, under the rules contained in the said Act X of 1859 applicable to trials before a Collector, and subject to the same regular and special appeal, the claims cognizable under such Act arising within the local limits of the jurisdiction of such Court. Any Judge so empowered shall exercise all the powers of a Collector under the said Act X of 1859 except the power of hearing appeals.

Small Cause Courts to furnish records, &c., called for by Local Government or High Court.

53. Courts of Small Causes shall comply with such requisitions as may from time to time be made by the Local Government or the High Court for records, returns and statements in such form and manner as such Government or Court may deem proper.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 15th March 1865, and is hereby promulgated for general information:—

Act No. XII of 1865.

An Act to amend the Law relating to the custody of prisoners within the local limits of the original jurisdiction of Her Majesty's High Court of Judicature at Fort William in Bengal.

Preamble.

Whereas it is expedient that, within the local limits of the original jurisdiction of Her Majesty's High Court of Judicature at Fort William in Bengal, persons should, for the purpose of being received and detained in prison, be committed to the custody of an Officer appointed by the Government of Bengal, instead of to the custody of the Sheriff of Calcutta; It is enacted as follows:—

1. In this Act:—

"High Court." "High Court" denotes Her Majesty's High Court of Judicature at Fort William in Bengal.

"Magistrate." "Magistrate" includes a Magistrate of Police appointed under Act XIII of 1856 (*for regulating the Police of the Towns of Calcutta, Madras and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore and Malacca*).

Enactments repealed.

2. The forty-seventh, forty-eighth, forty-ninth, fiftieth, fifty-first and fifty-second Sections of Act XVIII of 1862 (*to repeal Act XVI of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof, with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature*), and Act XXV of 1863 (*to empower Judges of the High Court and other authorities at Fort William in Bengal, to direct convicts to be imprisoned either in the House of Correction or the Great Jail of Calcutta, and to authorize the transfer of prisoners in certain cases from the House of Correction to the Great Jail and from the Great Jail to the House of Correction*) are hereby repealed.

After commencement of Act no one to be committed to Sheriff; And writs not to be issued to Sheriff.

3. After the commencement of this Act, no person shall be committed to the Sheriff of Calcutta to be received and detained in prison; and no writ shall be awarded to the said Sheriff commanding him to arrest and seize the body of any offender.

Government of Bengal may appoint Superintendent of Presidency Jail.

4. It shall be lawful for the Government of Bengal to appoint an Officer who shall be called the Superintendent of the Presidency Jail, and who shall have authority to receive and keep prisoners committed to his custody under the provisions of this Act.

Persons sentenced by High Court to imprisonment or death to be delivered to the Superintendent of the Presidency Jail.

5. Whenever any person shall be sentenced by the High Court in the exercise of its original Criminal jurisdiction to imprisonment or to death, the Court shall cause such person to be delivered to the Superintendent of the Presidency Jail, together with the warrant of the said Court, and such warrant shall be executed by the said Superintendent and returned by him to the High Court when executed.

Persons sentenced by High Court to transportation or penal servitude to be delivered for intermediate custody to Superintendent.

6. Whenever any person shall be sentenced by the High Court in the exercise of its original Criminal jurisdiction to transportation or penal servitude, the Court shall cause such person to be delivered for intermediate custody to the said Superintendent, and the imprisonment of such person shall have effect from such delivery.

Persons sentenced by Magistrate to imprisonment, or imprisoned for non-payment of fine to be delivered to Superintendent with a warrant.

7. Whenever any person shall be sentenced by a Magistrate of Police for the Town of Calcutta to imprisonment and whenever any person shall be imprisoned for default of payment of any fine imposed by any such Magistrate, the Magistrate shall cause such person to be delivered to the said Superintendent together with a warrant of the Court.

Superintendent to detain such persons according to exigency of warrant, and to return same when executed.

8. The said Superintendent shall detain the person so delivered to him according to the exigency of such warrant, and shall return such warrant when executed to the Court whence it issued.

Persons committed by Justice for trial by High Court to be delivered to Superintendent with warrant.

9. Persons committed by a Justice of the Peace or Magistrate for trial by the High Court in the exercise of its original Criminal jurisdiction, shall be delivered to the said Superintendent together with a warrant of commitment, directing him to have the bodies of such persons before the Court for trial at the Sessions of the Court next ensuing after the date of such commitment.

Persons arrested in pursuance of warrant of High Court or Small Cause Court to be delivered to Superintendent.

10. Every person arrested in pursuance of a warrant or order of the High Court in the exercise of its original Civil jurisdiction, or in pursuance of a warrant of any Court established in Calcutta under Act IX of 1850 (*for the more easy recovery of small debts and demands in Calcutta, Madras and Bombay*), shall be delivered by the proper Officer of the Court executing such warrant, together with a copy of such warrant, to the said Superintendent; and the Officer executing such warrant shall thenceforward be absolved from responsibility for the custody of the person so delivered.

11. The said Superintendent shall detain the person delivered to him by the Officer of the Court in manner aforesaid, according to the exigency of the warrant, and return the same to the said Officer of the Court as soon as the terms of the said warrant shall have been complied with.

Superintendent to detain such persons according to exigency of warrant.

12. From and after the commencement of this Act, all persons confined in the Great Jail of Calcutta, under process or sentence of Her Majesty's Supreme Court of Judicature at Fort William in Bengal, or of the High Court, or of any Police Magistrate, shall be considered to be and shall remain in the custody of the said Superintendent according to the terms of the warrants under which they shall have been respectively committed to custody.

Persons confined in House of Correction or Great Jail of Calcutta shall be deemed to be in custody of Superintendent.

13. Any warrant of commitment under Regulation III, 1818, of the Bengal Code (*for the confinement of State Prisoners*), may be directed to the said Superintendent in the same manner as the same might have been directed to the Sheriff, under Act XXXIV of 1850 (*for the better custody of State Prisoners*) and Act III of 1858 (*to amend the Law relating to the arrest and detention of State Prisoners*).

Warrant under Regulation III, 1818, Bengal Code, may be directed to Superintendent.

14. The provisions contained in the Statute 11 Vict., cap. 21 (*to consolidate and amend the laws relating to Insolvent Debtors in India*), relating to persons in prison or liable to be arrested or detained in or remanded or recommitted to, or entitled to be discharged from, prison within the limits of the town of Calcutta, shall apply to all persons in the custody of the said Superintendent or liable to be delivered to or entitled to be discharged from his custody.

Provisions of Statute 11 Vict., cap. 21 as to prisoners, to extend to persons in custody of Superintendent.

15. This Act shall come into operation on the first day of April 1865.

Commencement of Act.

16. The provisions of this Act may be extended to the local jurisdictions of Her Majesty's High Courts of Judicature at Madras and Bombay respectively by notification in the *Gazette of India*: such provisions when so extended shall, *mutatis mutandis*, relate to the custody of prisoners in such jurisdictions; and Regulation II of 1819 of the Madras Code (*for the confinement of State Prisoners*) and Regulation XXV of 1827 of the Bombay Code (*for the confinement of State Prisoners and for the attachment of the lands of Chieftains and others, for reasons of State*), shall respectively be read for the said Regulation III of 1818 of the Bengal Code, and so much of the Regulations or Acts for the time being in force in such jurisdictions respectively as is in any way inconsistent with or repugnant to any of the provisions of this Act shall thenceforward cease to have effect in such jurisdictions.

Act may be extended to Madras and Bombay.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st March 1865, and is hereby promulgated for general information:—

ACT NO. XIII OF 1865.

An Act to amend the procedure of Her Majesty's High Courts of Judicature in the exercise of their original Criminal jurisdiction, and to provide for the exercise of such jurisdiction at places other than the Presidency Towns.

Preamble.

Whereas it is expedient to amend the procedure of the High Courts of Judicature at Fort William in Bengal, at Madras, and at Bombay, in the exercise of their original Criminal jurisdiction, and also to provide for the exercise by such Courts of original Criminal jurisdiction under the Commission of the Governor General of India in Council, or of either of the Governors in Council of Madras and Bombay, in places other than the Presidency Towns, or at several such places by way of circuit; It is enacted as follows:—

Preliminary.

Short Title.

1. This Act may be cited as "The High Courts' Criminal Procedure Amendment Act, 1865."

Interpretation Clause.

2. In this Act, unless there be something repugnant in the subject or context—

"High Court." "High Court" denotes Her Majesty's High Courts of Judicature at Fort William in Bengal, at Madras and at Bombay, respectively.

"Chief Justice," "Judge," &c. "Chief Justice," "Judge," "Registrar," and other words denoting any particular Officer, respectively include any person for the time being authorized to act as such Chief Justice, Judge, Registrar, or other Officer.

"Magistrate." "Magistrate" denotes any person exercising any of the powers of a Magistrate under the Code of Criminal Procedure, and includes Police Magistrates in any Presidency Town.

"Clerk of the Crown." "Clerk of the Crown" includes, besides such Officer, a Crown Prosecutor and any Officer specially appointed by the Governor General of India in Council or the Governor in Council of Madras or Bombay to discharge the functions given by this Act to the Clerk of the Crown, in respect of any sittings of a Judge or Judges of the

High Court in a place other than the usual place of sitting, or in respect of any sittings of a Barrister under the forty-fourth Section of this Act.

"British India." "British India" denotes the territories which are or may become vested in Her Majesty or her successors under the Statute 21 and 22 Vic., cap. 106, except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

Gender and Number. Words importing the masculine gender include females: words in the singular number include the plural, and words in the plural number include the singular.

Of Charges where the accused is committed in a Presidency Town.

Charge to be delivered to Clerk of the Crown with commitment within the local limits of the ordinary original Civil jurisdiction.

3. Any Justice of the Peace or Magistrate who shall commit to custody or hold to bail any person for trial before the High Court for an offence committed, or which, according to law, may be dealt with as if it had been committed, within the local limits of its ordinary original Civil jurisdiction, shall, together with all examinations, informations, bailments, and recognizances now required to be delivered to such Court before the trial, deliver to the Clerk of the Crown a written instrument of charge signed by him stating for what offence such person is so committed or held to bail.

Clerk of the Crown to consider, and, if he will, to amend, alter, or add to the charge.

Charge with amendments, alterations or additions (if any) to be recorded.

4. The Clerk of the Crown shall peruse and consider the charge, and may, if he consider it necessary or expedient so to do, amend, alter, or add to the same. The charge, with such amendments, alterations, or additions, if any, shall be recorded in the High Court, and the person charged shall be entitled to have a copy of such charge with such amendments, alterations, or additions (if any) gratis.

Accused to have copies of examinations.

5. The person charged shall also be entitled to copies of the examinations of the witnesses upon whose depositions he has been so committed or held to bail, on payment of a reasonable sum for the same, not exceeding one anna for each folio of ninety words.

Effect of charge.

6. Upon charges recorded as aforesaid, persons committed to custody or held to bail shall be deemed to have been brought before the High Court in due course of law, and (subject to the provisions contained in the eighth Section of this Act) shall be arraigned at suit of the Crown, and the verdict shall be recorded thereupon.

Provisions of Act XVIII of 1862 as to indictments to apply to charges preferred under this Act.

7. In Act XVIII of 1862 *(to repeal Act XVI of* 1852 *in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature)*, the word "indictment" shall be understood to include the word "charge," and all the provisions of the said Act shall apply to charges recorded as aforesaid and the trial of such charges.

Nolle prosequi on unsustainable charge.

8. When any such charge shall have been recorded in the High Court as aforesaid, and shall at any time before the person charged is arraigned, appear to the Judge of the High Court who would in ordinary course try the same, to be clearly unsustainable, an entry to that effect may be made on the charge by such Judge. Such entry may be made without the fiat of the Advocate General, and shall have the effect of a *nolle prosequi* upon the charge, but shall not operate as an acquittal of the person charged unless and until three years from the time of making the entry shall have elapsed, at the expiration of which period, if no fresh charge have been brought on the same matter, he shall be considered as having been acquitted.

Of Grand Juries.

After commencement of this Act, Grand Jury not to be summoned.

9. From and after the date on which this Act shall come into operation, no warrant or precept shall be issued to the Sheriff or other Officer directing him to summon any persons to attend and serve as Grand Jurors. All persons who, but for this Act, would have been exempt from serving on Common Juries, shall be liable, except as hereinafter provided, to serve on such Juries.

No one to be charged on the presentment or inquisition of Grand Jurors, unless they have been summoned before the commencement of this Act.

10. No person shall be brought before the High Court on the presentment or inquisition of Grand Jurors, unless such presentment or inquisition shall have been made by Grand Jurors who shall have been duly summoned before this Act comes into force: Provided that if any precept for summoning a Grand Jury shall have been issued for the then next coming Sessions of the High Court, such Grand Jury shall proceed at such Sessions as if this Act had not passed.

Of Juries in Presidency Towns.

Certain trials to be held before Special Jurors.

11. Every person tried in a Presidency Town upon a charge of having committed an offence which is punishable with death, or upon any other charge if a Judge of the High Court shall so order, shall be tried before a Special Jury.

The Jurors' Book for the current year, to be taken as giving the first list of Jurors and Special Jurors.

12. The Jurors' Book for the year current when this Act comes into force, shall be taken as containing a correct general list of persons qualified and liable to serve as Jurors under this Act: and those persons whose names are entered in the said Jurors' Book as being privileged to serve on Grand r Special Juries only, shall be deemed to be persons

privileged and liable to serve only as Special Jurors under this Act: and a list of such last mentioned persons, to be called the "Special Jurors' List," shall forthwith, and subject to such rules as shall be prescribed by the High Court, be prepared by the Clerk of the Crown or such other Officer as the Chief Justice of the High Court shall direct.

The number of Special Jurors in the first list to be allowed to die down to two hundred.

13. The number of persons included in the "Special Jurors' List" prepared as in the last preceding Section is provided, shall be permitted gradually from year to year to diminish until the whole number of names remaining on such list shall not exceed two hundred: and no new name shall be added to such list until the number shall have been so diminished by the death or change of residence of the persons originally included in the list, or by other loss of such qualification as gave them the privilege of serving only as Grand or Special Jurors. After the number shall once have been reduced as aforesaid, the names of not more than two hundred persons shall ever at any one time be entered in the Special Jurors' List.

After which the number of Special Jurors not to exceed two hundred.

Special Jurors exempted from serving on Common Juries.

14. All persons whose names are entered in the "Special Jurors' List," shall be exempted from serving on any other than Special Juries.

Preparation of lists of Jurors and Special Jurors.

15. The Clerk of the Crown or such other Officer as the Chief Justice of the High Court shall direct, shall, before the first day of April in each year, and subject in all respects to such rules as the High Court shall from time to time prescribe, prepare a list of all persons qualified and liable to serve as Jurors: and shall, before the fifteenth day of April which shall first occur after the reduction of the number of names in the "Special Jurors' List" as aforesaid, and before every subsequent fifteenth day of April, but subject always to such rules as aforesaid, take from the general list of Jurors the names of such persons as he may think fit, regard being had to their property, character, and education, and shall enter the same in the "Special Jurors' List."

Officer preparing the lists to have full discretion: no appeal from his decision.

16. The Clerk of the Crown or other Officer appointed by the Chief Justice shall, subject to such rules as aforesaid, have full and entire discretion to prepare the said lists as shall seem to him to be proper, and there shall be no appeal from or review of his decision.

Lists of Jurors to be published in the Gazette.

17. The list of persons qualified or liable to serve as Jurors, and the "Special Jurors' List," respectively, signed by the Officer by whom the same shall have been prepared, shall be published once in the Official Gazette, before the first day of May next after their preparation, and copies of the said lists shall be affixed to some conspicuous part of the Court House.

Jurors and Special Jurors to be summoned for each Sessions.

18. Out of the names contained in the lists aforesaid, there shall be summoned for each Sessions thirty-six of those who are qualified and liable to serve on Special Juries, and seventy-two of those who are qualified and liable to serve on Common Juries.

Of Challenges of Jurors in the Presidency Towns.

Challenges.

19. A peremptory challenge to the number of twenty in Common Juries and ten in Special Juries, shall be allowed; but there shall be no challenge to the array, and save as aforesaid the following and no others shall be good causes of challenge, whether on behalf of the Crown or by the person charged:—

(1.) Some personal objection, such as alienage, infancy, old age, or deficiency in the qualification required by any law or rule having the force of law for the time being in force.

(2.) Some presumed or actual partiality in the Juror.

(3.) A previous conviction of the Juror under the Indian Penal Code, or the criminal law administered in the Supreme Courts of Judicature or the Courts of the East India Company previously to the enactment of such Code.

Judge to try challenge.

20. The Judge before whom the person charged is about to be tried shall try any challenge, other than a peremptory challenge, and if he allow the challenge, the Juror shall be set aside.

High Court to retain its present jurisdiction as to Jurors in Presidency Towns, except as altered by this Act.

21. Save as hereinbefore provided, the High Court shall retain all its present powers respecting the summoning, empanelling, qualification, challenging, and service of Jurors in the Presidency Towns: and shall have power to make such rules on these subjects (not inconsistent with the provisions of this Act) as shall seem to it to be proper. All rules relating thereto now in force in the High Court shall (so far as they are not inconsistent with this Act) remain in full force until repealed or altered by new rules made under this Section.

Of Sittings under a Commission.

Jurisdiction of Judge acting under Commission from Governor General of India in Council.

22. From and after the commencement of this Act, whenever it shall appear to the Governor General of India in Council convenient that the jurisdiction and power vested in the High Court at Fort William in Bengal should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the said High Court, whether within or without the Bengal Division of the Presidency of Fort William, other than the usual place of sitting of such Court, or at several such places by way of circuit, and the Governor General of India in Council shall, by his Commission for that purpose,

authorize and direct any of the Judges of such Court to hold sittings at such place or places accordingly, at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission in the places and manner therein directed, shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court of Judicature at Fort William in Bengal in its ordinary place of sitting, but subject, as respects the exercise of original Criminal jurisdiction in any place other than the ordinary place of sitting of such High Court, to the provisions contained in the twenty-eighth and following Sections of this Act.

Jurisdiction of Judge acting under Commission of Governor in Council of Madras.

23. From and after the commencement of this Act, whenever it shall appear to the Governor in Council of Madras convenient that the jurisdiction and power vested in the High Court of Judicature at Madras should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the same High Court, whether within or without the Presidency of Madras, other than the usual place of sitting of such Court, or at several such places by way of circuit, and such Governor in Council shall by his Commission for that purpose authorize and direct any of the Judges of such Court to hold sittings in such place or places accordingly at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission in the places and manner therein directed shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court at Madras, in its ordinary place of sitting, but subject, as respects the exercise of original criminal jurisdiction in any place other than the ordinary place of sitting of the same Court, to the provisions contained in the twenty-eighth and following Sections of this Act.

Jurisdiction of Judge acting under Commission of Governor in Council of Bombay.

24. From and after the commencement of this Act, whenever it shall appear to the Governor in Council of Bombay convenient that the jurisdiction and power vested in the High Court of Judicature at Bombay should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the same Court, whether within or without the Presidency of Bombay, other than the usual place of sitting of such Court, or at several such places by way of circuit, and such Governor in Council shall by his Commission for that purpose authorize and direct any of the Judges of such Court to hold sittings in such place or places accordingly at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission in the places and manner therein directed shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court at Bombay in its ordinary place of sitting, but subject, as respects the exercise of original Criminal jurisdiction in any place other than the ordinary place of sitting of the same Court, to the provisions contained in the twenty-eighth and following Sections of this Act.

High Court may allot jurisdiction to Judge acting under Commission.

25. The High Court may allot to a Judge or Judges acting under a Commission as aforesaid, such part of the extraordinary original Civil jurisdiction, and of the Civil and Criminal Appellate jurisdiction, and of the jurisdiction as a Court of revision or reference, which it is competent to exercise at its usual place of sitting, as the High Court may consider can be more conveniently exercised at any place or places mentioned in such Commission.

Commission to specify time and place during and in which it shall travel.

26. Every Commission issued as aforesaid under any of the preceding Sections shall specify the time during which and the districts or places within which such Commission shall remain in force; and such time and the limits of such districts or places shall be notified in the Official Gazette.

Power to appoint an Associate Judge.

27. The Governor General of India in Council or the Governor of Madras or of Bombay in Council, as the case may be, may by such Commission as aforesaid associate with such Judge of the High Court any Barrister-at-law of not less than five years' standing, or any Sessions Judge. The person so associated shall be called the Associate Judge, and, unless directed to try persons separately as hereinafter provided, may sit with the Judge of the High Court during the trials of persons tried under such Commission. Whenever any Associate Judge sits with the Judge of the High Court, the latter shall preside, conduct the case, and pronounce judgment.

Charge to be delivered with record of preliminary inquiry without the local limits of the original criminal jurisdiction.

28. Any Justice of the Peace or Magistrate without the local limits of the ordinary original Civil jurisdiction of the High Court, before whom any European British subject shall be brought for an offence committed without those limits shall, immediately after the conclusion of the preliminary enquiry, and if he shall determine to commit or hold to bail such person for trial, give notice thereof to the High Court to which the commitment or bailment would ordinarily be made, and shall send to the Clerk of the Crown, together with the record of the preliminary enquiry, and translations into English of any writings not in that language, a written instrument of charge signed by him stating for what offence such person is committed or held to bail. On receipt of these documents, the Clerk of the Crown shall proceed as directed in the like case in the fourth Section, and the person charged shall be entitled to copies in like manner as he would be entitled to copies under the fifth Section, of this Act. If a Commission under which the person charged might be tried shall have been issued, the High Court shall consider at what place the person charged can be most conveniently tried, and shall give directions accordingly: if no such Commission shall have been issued, the High Court shall obtain information from the Government as to whether such Commission is about to issue, and shall then give such directions as last aforesaid. Provided always that, if the commitment or bailment have been made after the issue and during the running of a Commission under which the person charged might be tried, the notice by this Section directed to be given to the Clerk of the Crown shall be given,